

2003 DRAFTING REQUEST**Bill**Received: **05/13/2003**Received By: **chanaman**Wanted: **As time permits**

Identical to LRB:

For: **Mark Pettis (608) 267-2365**

By/Representing:

This file may be shown to any legislator: **NO**Drafter: **chanaman**

May Contact:

Addl. Drafters:

Subject: **Courts - garn/injunct**

Extra Copies:

Submit via email: **YES**Requester's email: **Rep.Pettis@legis.state.wi.us**Carbon copy (CC:) to: **cathlene.hanaman@legis.state.wi.us****Pre Topic:**

No specific pre topic given

Topic:

Duration of temporary restraining orders

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rnelson2 05/14/2003			_____			
/1	chanaman 06/26/2003	kfollett 07/02/2003	chaskett 07/10/2003	_____	amentkow 07/10/2003	sbasford 07/28/2003	
	sbasford 07/28/2003	kfollett 07/03/2003		_____			

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

At intro.

<END>

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No specific pre topic given

Topic:

Duration of temporary restraining orders

*Talk to ? from domestic
abuse group (MAGP)*

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rnelson2	<i>1/1/03 7/3</i>	<i>1/cph 7/3</i>	<i>ps/cgh 7/10</i>			

FE Sent For:

<END>

Nelson, Robert P.

From: Pettis, Mark
Sent: Tuesday, May 13, 2003 8:38 AM
To: Nelson, Robert P.
Subject: FW: Fax received (11p) from:'715 485 3343' on ID:2823628



16A32000.tif

If the law needs to be change. Please draft.

Thanks,

Rep. Pettis

-----Original Message-----

From: Faxination
Sent: Tuesday, May 13, 2003 8:12 AM
To: Colvin, Alan; Liedl, Kimberly; Pettis, Mark
Subject: Fax received (11p) from:'715 485 3343' on ID:2823628

Incoming Fax:
Description:

Explanation:
Sent to:'2823628' CSID:715 485 3343 (0)

Items received: 11
Duration: 219 seconds Transmission speed: 14400 baud
Gateway ID: 0 Job Reference: 16A32

~~~~~

TO: Representative Mark Pettis

FAX: 608-282-3628 PHONE: 888-529-0028

FROM: Chief Deputy Steve Moe

FAX: 715-484-8355 PHONE: 715-485-8352

DATE: May 13<sup>th</sup>, 2003

11 pages, including cover.

Attached to this cover is the documentation that shows the need to change the law on temporary restraining orders and injunctions. The law should be reviewed in each of the following areas:

- 813.12 (3) (c) Domestic Abuse *Act wa changed 0152892/3 (7)(c)*
- 813.122 (4) (c) Child Abuse
- 813.123 (4) (c) Vulnerable Adult *-(9)(c)*
- 813.125 (3) (c) Harassment restraining orders and injunctions *(6)(c)*

I would recommend changing the language to keep the TRO in effect until the case is dismissed or the injunction is served on the Respondent.

Just my thoughts, I admit that I haven't taken the time to research this to any great extent.

STATE OF WISCONSIN

CIRCUIT COURT

POLK COUNTY

STATE OF WISCONSIN,

Plaintiff,

CRIMINAL COMPLAINT

vs.

CLIFFORD O. APFEL, DOB: 05/30/65,  
P.O. Box 281  
Rice Lake, WI 54868.

Defendant.

File No. 01 CM 399

David Lindholm, on information and belief, being first duly sworn, on oath, says that on July 5, 2001, at Polk County, in said County, the defendant did:

Intentionally violate a Temporary Domestic Abuse Restraining Order (01 CV 282), issued by the Polk County Circuit Court on June 27, 2001, contrary to Sec. 813.12(8) of the Wis. Stats.

**MAXIMUM PENALTY:** Upon conviction of this charge, the maximum possible penalty is a fine of not more than \$1,000; and imprisonment not to exceed 9 months, or both;

and prays that said defendant be dealt with according to law; and that the basis for the complainant's charge of such offense is:

Your complainant is a police Lieutenant employed by the Polk County Sheriff's Department and in said capacity has access to the police report filed by Chief Michael Holmes of the Amery Police Department.

In Chief Holmes report he states that on Friday, July 6, 2001, at approximately 3:20 p.m., he received a telephone call from Lourie A. Keen, DOB: 02/08/62, in regards to a violation of a Domestic Abuse Temporary Restraining Order violation which occurred on Thursday, July 5, 2001, in the afternoon hours. Lourie resides at 105 South Street, Apt. #2, in the City of Amery.

According to Lourie, Clifford O. Apfel, DOB: 05/30/65, came over to her residence that afternoon in violation of a Domestic Abuse Temporary Restraining Order issued in Branch II of the Polk County Circuit Court by the Honorable Robert H. Rasmussen on June 27, 2001 (01 CV 282). A review of Polk County Circuit Court File 01 CV 282, indicates that as part of the temporary order, Apfel was ordered to "Avoid Petitioner's

Page 2

Clifford O. Apfel

**(Lourie Keen) residence and any premises occupied by her, and to avoid contacting her in any way."** Apfel was personally served with a copy of that order by SGT Mark Meyer of the Amery Police Department on June 28, 2001, at 9:00 a.m.

On July 3, 2001, a hearing was held on the matter before the Honorable Judge Rasmussen, and Lourie Keen was issued a two year Domestic Abuse Injunction against Apfel that date. Apfel was not in court that date, but was personally served with a copy of that order by Deputy Bradley Kahl of the Barron County Sheriff's Department, on July 9, 2001.

Lourie told Chief Holmes that during the afternoon hours of July 5, 2001, several neighbors, to include Gary L. Fredrickson, Vickie R. Peterson, and Jeremiah R. Boehm, all witnessed a subject they personally knew as Clifford O. Apfel, come over to her apartment in Amery, and saw him attempt to enter her apartment (#8). However, she had her locks changed. Apfel proceeded to knock over a BBQ grill and take some type of acetylene tank from outside the apartment complex and put it in his car. Lourie said, she was not home at the time of the incident.

On July 12, 2001, at approximately 2:45 p.m., Chief Holmes spoke with Gary L. Fredrickson, DOB: 10/09/48, who was visiting his parents in Lourie's apartment complex. His parents live on the ground floor of the residence and Lourie Keen lives directly above them. Gary stated, he observed a subject known to him as Clifford O. Apfel, in the driveway, walking toward Lourie's apartment.

That same date, at approximately 4:30 p.m., Chief Holmes spoke with Vickie R. Peterson, DOB: 12/24/64, who also resides in the same apartment complex and shares a common driveway. She stated that during the afternoon of July 5, 2001, she observed a subject known to her as Clifford O. Apfel pull into the driveway and block her car in. He then went up to Lourie Keen's apartment. Chief Holmes also spoke with Jeremiah R. Boehm, DOB: 03/26/83, who resides with Vickie Peterson.

Jeremiah stated he was outside his residence when he observed a subject known to him as Clifford O. Apfel, drive his vehicle in their common driveway, which occurred at approximately 3:00 p.m. He then observed Apfel exit his vehicle and knock over a charcoal grill and pick up an acetylene tank under the deck area, and walk upstairs to the Keen apartment. Jeremiah said, he watched as Apfel put his key in the lock, but was unsuccessful in gaining entry to the residence as Lourie had changed locks. Apfel then left the area.

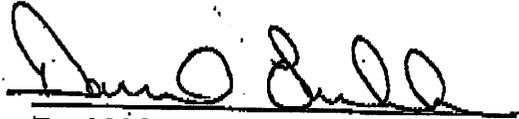
Your complainant states a copy of the Temporary Domestic Abuse Restraining Order together with a copy of the Domestic Abuse Injunction is hereby incorporated by reference with the body of this criminal complaint and attached

Page 3

Clifford O. Apfel

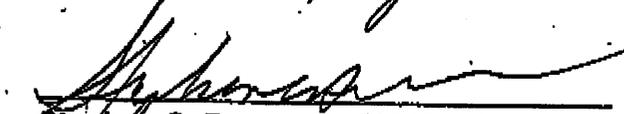
hereto.

Your complainant states, the information provided by **Lourie A. Keen** is trustworthy and reliable in that she was the victim of the crime; and the information provided by **Gary L. Fredrickson, Vickie R. Peterson, and Jeremiah R. Boehm** is also trustworthy and reliable as citizen-witnesses, aiding law enforcement.



**David Lindholm, Complainant**

SUBSCRIBED AND SWORN TO BEFORE  
ME THIS 13th DAY OF August 2001.



**Stephen C. Dorrance, #1012161  
Asst. District Attorney  
Polk County, WI**

STATE OF WISCONSIN

CIRCUIT COURT

POLK COUNTY

State of Wisconsin

Plaintiff

DECISION ON DEFENDANT'S  
MOTION TO DISMISS

vs.

Clifford O. Apfel

Defendant

File No.: 01 CM 399

The facts relevant to defendant's motion to dismiss are not in dispute. The temporary restraining order was issued June 27, 2001. The defendant was served with a copy of that temporary restraining order on June 28, 2001. A hearing was held on the petitioner's request for an injunction on July 3, 2001. However, the respondent (defendant herein) was not present at that hearing. The injunction was issued July 3, 2001 on a default basis. The defendant's acts are alleged to have occurred on July 5, 2001. On July 9, 2001 the defendant was served with a copy of the injunction.

The language of §813.12(3)(c) is clear and unambiguous. That statute unequivocally states that "The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub.(4)." The same language is parroted in bold print on the face of the temporary restraining order stating that 'THIS ORDER IS IN EFFECT UNTIL THE INJUNCTION HEARING'.

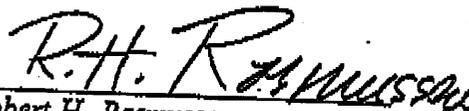
This court finds as a matter of law that the defendant cannot be charged with violating a temporary restraining order which is no longer in effect on the date when it was allegedly violated.

However, §813.12(8) Wis. Stats. allows a charge of either knowing violation of a temporary restraining order or knowing violation of an injunction. Therefore, the State may file an amended complaint which alleges that the defendant knowingly violated the injunction. Of course, to survive a "sufficiency test" the complaint will need to recite facts which convince this court (and/or the reasonable inferences arising therefrom convince this court) that there is probable cause to believe that the defendant knew or had reason to know of the existence, terms, and provisions of the injunction.

The State will have ten days from the date of this decision during which it may file an amended criminal complaint which meets the requirements set forth above. Failure to do so will result in this matter being dismissed without prejudice and without costs.

Dated: November 27, 2001.

BY THE COURT:



Robert H. Rasmussen  
Circuit Judge - Branch 2

cc: Steve Dorrance  
Karen Smith

01126.7

July 20, 2002

THE STATE OF WISCONSIN  
STATE PUBLIC DEFENDER



State Public Defender  
Nicholas L. Chiarkas  
  
Deputy State Public Defender  
Virginia Pomeroy  
  
Director, Trial Division  
Michael Tobin  
  
Director, Appellate Division  
Maria Stephens

3<sup>rd</sup> Floor, Tulgren Square Building  
502 Second Street  
Hudson, WI 54016

Phone: (715) 386-4360  
Fax: (715) 386-4371

First Assistant  
Dana Smetana  
Assistant State Public Defender  
Alex Andrea  
Howard Cameron  
Bradley Keith  
John Kucinski  
John Leonard  
Karen Smith  
  
Client Services Specialist  
Barbara Gorman  
  
Investigator  
Milind Shah

November 9, 2001

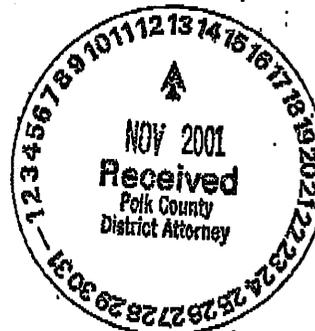
Honorable Robert Rasmussen  
Circuit Court Judge - Branch 2  
Polk County Courthouse Suite 280  
100 Polk County Plaza  
Balsam Lake, WI 54810

COPY

Re: State of Wisconsin v. Cliff Apfel  
Polk County Case no. 01-CM-399

Letter Brief on Defendant's Motion to Dismiss

Dear Judge Rasmussen,



By written motion dated September 05, 2001, the defense has challenged the complaint against Mr. Apfel alleging Violation of a Temporary Restraining Order.

The chronology of events is uncontested:

- June 27, 2001 Temporary restraining order and notice of hearing signed in 01-CM-282
- June 28, 2001 Defendant served with TRP 01-CV-282
- July 03, 2001 Hearing on Injunction held (defendant was not present)
- July 05, 2001 Alleged acts by the defendant charged in the complaint
- July 09, 2001 Defendant served with Injunction

Issue

If a TRO is in effect "until the injunction hearing", i.e., July 3, can a defendant be charged with violating that order for acts committed after July 3?

The defense believes he cannot.

The charging portion of the criminal complaint alleges that Mr. Apfel violated Wisconsin Statute Section 813.12(8). The statute makes criminal violations of either a TRO or an injunction. In this particular complaint, the state has specified that Mr. Apfel's conduct violated the temporary order.

Wisconsin Statute Section 813.12(3)(c) states "the temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub.(4). This language is included on the face of the TRO in bold and large capital letters, and was served upon Mr. Apfel."

The language is clear and unambiguous. The TRO has effect until the hearing is held. At that point in time, it ceases to have effect.

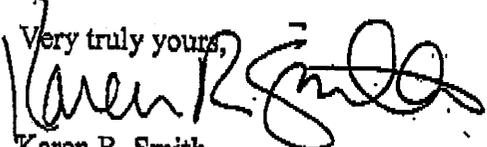
There is no allegation that Mr. Apfel violated the TRO while it was in effect. There is no basis for a charge of violating the temporary restraining order.

#### TRO v. Injunction

If the state amends, or the court orders an amendment to a violation of an injunction, the defense believes that the State is still without probable cause. The language of sect. 813.12(8) states "whoever knowingly violates a temporary restraining order or injunction..." In this case, Mr. Apfel knew that the TRO was no longer in effect, and he had yet to be served with the injunction.

For the above stated reasons, the defense moves for dismissal of the charge.

Very truly yours,

  
Karen R. Smith

Assistant State Public Defender

cc: Steve Donancy

## OFFICE OF THE DISTRICT ATTORNEY

**COPY**MARK D. BILLER  
DISTRICT ATTORNEYSTEPHEN C. DORRANCE  
ASSISTANT DISTRICT ATTORNEYJANET M. KELTON  
VICTIM/WITNESS ASSISTANCE  
(715) 485-9266POLK COUNTY COURTHOUSE  
100 POLK COUNTY PLAZA, SUITE 260 • BALSAM LAKE, WISCONSIN 54810  
PHONE (715) 485-9231 • FAX (715) 485-9153

November 15, 2001

Honorable Robert H. Rasmussen  
Circuit Court Judge - Branch 2**RE: STATE OF WISCONSIN vs. CLIFFORD APFEL**  
Case No. 01 CM 399

Your Honor:

The facts of this case are undisputed. The defendant was the subject of both a temporary restraining order and an injunction granted by Polk County Court in favor of the petitioner/victim. The defendant was aware of the temporary restraining order and the conditions attendant to the order. The defendant was not present at the final/injunction hearing; and may not have been served with the required papers, giving him notice of the existence of the injunction and the conditions attached to the injunction, before the alleged incident in this file. The defendant is charged with violating the temporary restraining order by attempting to contact the victim. The evidence is based on the testimony of citizen-witnesses rather than just the say-so of the alleged victim. There can be no dispute that at the time of the alleged incident; the defendant must have been aware that he was in violation of the temporary restraining order by his actions. Defendant had constructive knowledge of his limitations, even if he did not have actual knowledge of the injunctive conditions, restricting his access to the alleged victim.

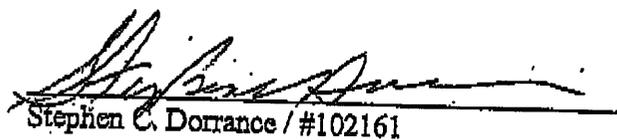
Defense counsel argues the case should be dismissed because the legal papers state that the temporary restraining order terminates upon issuance/hearing of the final action. (Assuming no injunction is ordered, the hearing terminates the litigation by its existence.) Such argument, misses the point and purpose of the statutes for protection of the victims/petitioners. The State clearly contemplated the continuous protection of an individual until such time as the Court is satisfied that such protection is unwarranted. In the instant case, the victim applied, was granted relief, and received a final order. The fact that the defendant did not participate in the latter part of the process is inconsequential. Wis. Stats. 813.12 and 813.125 both state clearly who may petition and against whom a petition may be brought. Further, the Statutes describe venue, costs, length of order, extension of order, findings to be made and corrective actions. "Cease the harassment of another" or "refrain from committing acts of domestic abuse" i.e. against the petitioner.

Page Two

Notice to the defendant/respondent is covered in Statute 813.12(3)(b) and 813.125(3)(b). Enforcement of the order by police is found in Stat. 813.12(7) and 813.125(5).

All parties are cognizant that the order seeks to regulate conduct, not mere speech. Bachowski v. Salamone, 139 Wis. 2d 387 (1987). Clearly, the alleged behavior of the defendant in this instance is of a substantially similar nature to be enjoined by the temporary restraining order/injunction. In the final analysis, no logic indicates that the Court once having thrown the mantle of protection over the victim should lift that assurance so that offenders can have access to the victim, in limited, isolated, or even special circumstances. The law expects consistency, the public demands accountability, and practical purpose, not idyllic theory, should dictate the outcome of the decision. The defense motion should be denied.

Respectfully submitted:



Stephen C. Dorrance / #102161

Assistant District Attorney

Polk County, Wisconsin

cc: Attorney Karen Smith

01-0657

STATE OF WISCONSIN, CIRCUIT COURT,

POLK

COUNTY

For Official Use

Petitioner: Louise Keen  
 Date of Birth: 2-8-62  
 Address: 105 South Street West  
 (Optional) Apt. 2 Amery, Wisc.  
 -vs-  
 Respondent: Cliff D. Apfel 5-30-65  
 Address: 105 South Street West  
Apt. 2 Amery, Wisc.

Notice of Hearing -  
 Temporary  
 Restraining Order  
 (Domestic Abuse)  
**AUTHENTICATED**  
 No. 010U282  
 BY ML Madson

The court has reviewed the petition and finds reasonable grounds to believe that the respondent has engaged in, or based on the prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner.

The petitioner  is  is not in imminent danger of physical harm.

**COPY**

THE COURT ORDERS that a hearing for an injunction be held:

|                 |                  |      |                   |          |                                                                                                 |
|-----------------|------------------|------|-------------------|----------|-------------------------------------------------------------------------------------------------|
| Date            | <u>7/3/01</u>    | Time | <u>12:30 p.m.</u> | Location | <u>Polk County Courthouse</u><br><u>100 Polk Plaza-Branch 2</u><br><u>Balsam Lake, WI 54810</u> |
| Presiding Judge | <u>Rasmussen</u> |      |                   |          |                                                                                                 |

and service of this order shall be made 48 hrs. prior to the date of the hearing.

FAILURE TO APPEAR could result in a final injunction being issued directing:

- a. that you avoid the petitioner's residence and/or premises temporarily occupied by the petitioner now and in the future;
- b. that you avoid contacting or causing any other person to contact the petitioner, unless certain conditions are met;
- c. that you refrain from committing acts of domestic abuse against the petitioner; and
- d. any other appropriate orders.

Violation of an injunction issued at this hearing may result in your arrest and imposition of criminal penalties.

THE COURT FURTHER ORDERS: (Only if there is a finding of imminent danger of physical harm.)

- 1. The respondent refrain from committing acts of domestic abuse against the petitioner.
- 2. The respondent avoid the petitioner's residence and/or the premises temporarily occupied by the petitioner.
- 3. The respondent avoid contacting or causing any other person other than a party's attorney to contact the petitioner, unless the petitioner consents in writing. Contact includes contact at work, school, public places, by phone or in writing.
- 4. If requested, the sheriff shall serve and assist in executing this Temporary Restraining Order and accompany the petitioner and assist in placing the petitioner in physical possession of his or her residence.
- 5. Other: \_\_\_\_\_

**THIS ORDER IS IN EFFECT UNTIL THE INJUNCTION HEARING.**

Violation of this order shall result in immediate arrest and is punishable by imprisonment not to exceed 9 months or a fine not to exceed \$1,000, or both, and payment of filing and service fees:

If an injunction is issued, the judge or court commissioner must order the respondent not to possess a firearm while the injunction is in effect.

This injunction is entitled to full faith and credit in every civil or criminal court of the United States or any other state, or Indian tribal courts (to the extent such tribal courts have personal jurisdiction over non tribal members).

If you need help in this matter because of a disability, please call:

(715) 485-9299

BY THE COURT:

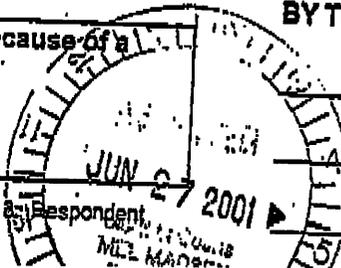
R.H. Rasmussen  
 Circuit Court Judge / Court Commissioner

Robert H Rasmussen  
 Name Printed or Typed

Name Printed or Typed

Date

Distribution: 1. Court-Original 2. Petitioner 3. Respondent 4. Law Enforcement



6/27/01  
Date

01-0639

STATE OF WISCONSIN, CIRCUIT COURT,

POLK

COUNTY.

Petitioner: Laurie Keen

Address:

(Optional)

-Vs-

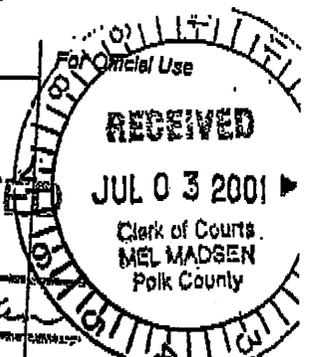
Respondent: Cliff O Apfel

Address:

COPY

Injunction (Domestic Abuse) AUTHENTICATED

NO Case No. 01-CV-282 BY: Mel Madgen



| Respondent's | Date of Birth | Sex | Race | Height | Weight | Hair color | Eye color |
|--------------|---------------|-----|------|--------|--------|------------|-----------|
|              | 5-30-65       | M   | W    | 5'6"   | 170    | blk        | h2l       |

THE COURT FINDS THAT:

1. The petitioner has filed a petition alleging domestic abuse.
2. The petitioner has served upon the respondent a copy of the petition and notice of the time for a hearing on the issuance of the injunction; or the respondent has served upon the petitioner notice of the time for a hearing on the issuance of the injunction. The respondent had an opportunity to be heard. This court has personal and subject matter jurisdiction.
3. Based on the hearing held on the petition, there are reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the petitioner and the respondent might engage in, domestic abuse of the petitioner as defined in §813.12(1)(a), Wisconsin Statutes.

IT IS ORDERED THAT:

1. The respondent refrain from committing acts of domestic abuse against the petitioner.
2. The respondent avoid the petitioner's residence or any premises temporarily occupied by the petitioner now and in the future.
3. The respondent avoid contacting or causing any person other than a party's attorney to contact the petitioner unless the petitioner consents in writing. Contact includes contact at work, school, public places, by phone or in writing.
4. If requested, the sheriff shall serve and assist in executing this final injunction and accompany petitioner and assist in placing petitioner in physical possession of his or her residence; other: \_\_\_\_\_
5. Other: \_\_\_\_\_

IT IS FURTHER ORDERED THAT the respondent is prohibited from possessing a firearm until the expiration of this injunction. Possession of a firearm is a Class E Felony punishable by a maximum of 2 years in prison or \$10,000 in fines, or both. A respondent may retain a firearm only if the respondent is a peace officer and only to the extent required by the peace officer's employer. The respondent shall immediately surrender any firearm(s) that he or she owns or has in his or her possession to:

the sheriff of this county.  the sheriff of the county in which the respondent resides; \_\_\_\_\_

another person: \_\_\_\_\_

Name and Address

THIS INJUNCTION SHALL BE EFFECTIVE UNTIL

7/3/2003

Violation of this order shall result in immediate arrest and is punishable by imprisonment not to exceed 9 months or a fine not to exceed \$1,000, or both, and payment of filing and service fees.

This injunction is entitled to full faith and credit in every civil or criminal court of the United States or any other state, or Indian tribal courts (to the extent such tribal courts have personal jurisdiction over non tribal members).

The respondent was present in court and personally served with a copy of this order.

BY THE COURT:

R.H. Rasmussen  
Circuit Court Judge / Court Commissioner

Robert H Rasmussen

Name Printed or Typed

7/3/01

Date

Distribution:

1. Original - Court
2. Petitioner
3. Respondent
4. Law Enforcement
5. Department of Justice or Designee



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-27197  
CMH&MJL: KJ/RMC

DN

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

- 1 AN ACT <sup>gen cat</sup> relating to: notice for child abuse, vulnerable adult, and harassment  
2 injunctions.

*Analysis by the Legislative Reference Bureau*

Current law allows a court to impose four types of restraining orders: domestic abuse, child abuse, vulnerable adult, and harassment. For each petition for an order, the court first holds a hearing to determine whether to issue a temporary restraining order and later holds a hearing to determine whether to issue an injunction. If the subject of a domestic abuse, child abuse, or harassment order or injunction violates its terms, a law enforcement officer must arrest the person. If the subject of a vulnerable adult order or injunction violates its terms, a law enforcement officer may arrest the person.

109  
Under current law, temporary restraining orders are effective until the court holds the injunctive hearing. At the hearing, if the court issues a child abuse, vulnerable adult, or harassment injunction, the injunction is effective once the subject of the injunction is served with the injunction. If the court issues a domestic abuse injunction, however, it is effective as soon as the court issues it as long as the subject was served with the petition and the notice of the time for the injunctive hearing. If the subject of a domestic abuse injunction violates its terms before the subject is served with the injunction, a law enforcement officer must arrest the person.

This bill makes a child abuse injunction, vulnerable adult injunction, or harassment injunction effective as soon as the court issues it as long as the subject was served with the petition and notice of the time for the injunctive hearing.

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

1           **SECTION 1.** 813.12 (7) (intro.) of the statutes is renumbered 813.12 (7) (am)  
2 (intro.).

3           **SECTION 2.** 813.12 (7) (a) of the statutes is renumbered 813.12 (7) (am) 1.

4           **SECTION 3.** 813.12 (7) (b) of the statutes is renumbered 813.12 (7) (am) 2.

5           **SECTION 4.** 813.12 (7) (c) of the statutes is amended to read:

6           813.12 (7) (c) A respondent who does not appear at a hearing at which the court  
7 orders an injunction under s. ~~813.12~~ sub. (4) but who has been served with a copy of  
8 the petition and notice of the time for hearing under s. ~~813.12~~ sub. (3) has  
9 constructive knowledge of the existence of the injunction and shall be arrested for  
10 violation of the injunction regardless of whether he or she has been served with a  
11 copy of the injunction.

(u)(a)  
2.

History: 1983 a. 204, 540; 1985 a. 29, 135; 1989 a. 193; 1993 a. 319; 1995 a. 71, 306; 1999 a. 162; 2001 a. 61, 109; s. 13.93 (2) (c).

12           **SECTION 5.** 813.122 (10) (intro.) of the statutes is renumbered 813.122 (10) (am)  
13 (intro.).

14           **SECTION 6.** 813.122 (10) (a) of the statutes is renumbered 813.122 (10) (am) 1.

15           **SECTION 7.** 813.122 (10) (b) of the statutes is renumbered 813.122 (10) (am) 2.

16           **SECTION 8.** 813.122 (10) (c) of the statutes is created to read:

17           813.122 (10) (c) A respondent who does not appear at a hearing at which the  
18 court orders an injunction under sub. (5) but who has been served with a copy of the  
19 petition and notice of the time for hearing under sub. (a) has constructive  
20 knowledge of the existence of the injunction and shall be arrested for violation of the

(5)(a) 2.

1 injunction regardless of whether he or she has been served with a copy of the  
2 injunction.

3 SECTION 9. 813.123 (9) (intro.) of the statutes is renumbered 813.123 (9) (am)  
4 (intro.).

5 SECTION 10. 813.123 (9) (a) of the statutes is renumbered 813.123 (9) (am) 1.

6 SECTION 11. 813.123 (9) (b) of the statutes is renumbered 813.123 (9) (am) 2.

7 SECTION 12. 813.123 (9) (c) of the statutes is created to read:

8 813.123 (9) (c) A respondent who does not appear at a hearing at which the  
9 court orders an injunction under sub. (5) but who has been served with a copy of the  
10 petition and notice of the time for hearing under sub. (5)(a) 2. has constructive  
11 knowledge of the existence of the injunction and may be arrested for violation of the  
12 injunction regardless of whether he or she has been served with a copy of the  
13 injunction.

14 SECTION 13. 813.125 (6) (intro.) of the statutes is renumbered 813.125 (6) (am)  
15 (intro.).

16 SECTION 14. 813.125 (6) (a) of the statutes is renumbered 813.125 (6) (am) 1.

17 SECTION 15. 813.125 (6) (b) of the statutes is renumbered 813.125 (6) (am) 2.

18 SECTION 16. 813.125 (6) (c) of the statutes is created to read:

19 813.125 (6) (c) A respondent who does not appear at a hearing at which the  
20 court orders an injunction under sub. (4) but who has been served with a copy of the  
21 petition and notice of the time for hearing under sub. (4)(a) 2. has constructive  
22 knowledge of the existence of the injunction and shall be arrested for violation of the  
23 injunction regardless of whether he or she has been served with a copy of the  
24 injunction.

25 SECTION 17. Initial applicability.



**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2719/1dn  
CMH:AMM.....

*Date*

*Leg*

Representative Pettis,

5

Your request identified the problem that a law enforcement officer may lack the authority to arrest a person who violates the terms of a restraining order if the temporary restraining order has expired and if the injunction notice had not been served. This draft eliminates the problem for harassment, child abuse, and vulnerable adult orders.

*(4) (a) 2.*

The law on domestic abuse orders was changed in 2001 Wisconsin Act 109 to eliminate the problem. That act made injunctions effective as of the injunctive hearing even if the person has only constructive notice of the injunction. The person has constructive notice after the person has been served with a copy of the petition and notice of the time for hearing under s. 813.12 (4) even if the person did not appear at the injunctive hearing or was not served with a copy of the injunction.

I changed ss. 813.122, 813.123, and 813.125 to be similar to the domestic abuse orders. This bill makes an injunction effective as of the injunctive hearing even if the person has only constructive notice of the injunction. This change effects your intent. I did not, as you suggested, extend the temporary restraining order until the person was served with a copy of the injunction because an injunction has benefits that a temporary restraining order does not. For instance, s. 813.122 (5m) requires a judge or court commissioner to prohibit the enjoined person from possessing a firearm, and s. 813.125 (4m) permits a judge or court commissioner to prohibit the enjoined person from possessing a firearm. Is that okay?

x

Since you requested that the orders be similar, you should know that if a person violates a domestic abuse, child abuse, or harassment injunction, the law requires a law enforcement officer to arrest the violator. However, if a person violates a vulnerable adult injunction, the law only allows a law enforcement officer to arrest the violator. If you would like to amend the vulnerable adult injunction provision to require a law enforcement officer to arrest a violator, I will redraft the bill.

Cathlene Hanaman  
Legislative Attorney  
Phone: (608) 267-9810  
E-mail: cathlene.hanaman@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2719/1dn  
CMH:kjf:cph

July 10, 2003

Representative Pettis,

Your request identified the problem that a law enforcement officer may lack the authority to arrest a person who violates the terms of a restraining order if the temporary restraining order has expired and if the injunction notice has not been served. This draft eliminates the problem for harassment, child abuse, and vulnerable adult orders.

The law on domestic abuse orders was changed in 2001 Wisconsin Act 109 to eliminate the problem. That act made injunctions effective as of the injunctive hearing even if the person has only constructive notice of the injunction. The person has constructive notice after the person has been served with a copy of the petition and notice of the time for hearing under s. 813.12 (4) (a) 2. even if the person did not appear at the injunctive hearing or was not served with a copy of the injunction.

I changed ss. 813.122, 813.123, and 813.125 to be similar to the domestic abuse orders. This bill makes an injunction effective as of the injunctive hearing even if the person has only constructive notice of the injunction. This change effects your intent. I did not, as you suggested, extend the temporary restraining order until the person was served with a copy of the injunction because an injunction has benefits that a temporary restraining order does not. For instance, s. 813.122 (5m) requires a judge or court commissioner to prohibit the enjoined person from possessing a firearm, and s. 813.125 (4m) permits a judge or court commissioner to prohibit the enjoined person from possessing a firearm. Is that okay?

Since you requested that the orders be similar, you should know that if a person violates a domestic abuse, child abuse, or harassment injunction, the law requires a law enforcement officer to arrest the violator. However, if a person violates a vulnerable adult injunction, the law only allows a law enforcement officer to arrest the violator. If you would like to amend the vulnerable adult injunction provision to require a law enforcement officer to arrest a violator, I will redraft the bill.

Cathlene Hanaman  
Legislative Attorney  
Phone: (608) 267-9810  
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**Mentkowski, Annie**

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**From:** Liedl, Kimberly  
**Sent:** Friday, July 25, 2003 2:03 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 03-2719/1 Topic: Duration of temporary restraining orders

It has been requested by <Liedl, Kimberly> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-2719/1 Topic: Duration of temporary restraining orders

**Emery, Lynn**

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**From:** Emery, Lynn  
**Sent:** Tuesday, August 05, 2003 3:55 PM  
**To:** Liedl, Kimberly  
**Cc:** Rep.Hundertmark  
**Subject:** LRB-2719/1 & 1dn (attached as requested)

*per Kimber*



03-2719/1



03-2719/1dn

Lynn Emery  
Program Assistant  
Legislative Reference Bureau  
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