

👉 **03hr_AC-CF_ab474_pt01**



(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2003-04

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Children and Families (AC-CF)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (May 2012)

Assembly

Record of Committee Proceedings

Committee on Children and Families

Assembly Bill 474

Relating to: notice for child abuse, vulnerable adult, and harassment injunctions.

By Representatives Pettis, Hahn, Albers, Van Roy, Coggs, Hundertmark, F. Lasee, Kreibich and Bies; cosponsored by Senator Lassa.

August 14, 2003 Referred to Committee on Children and Families.

October 30, 2003 **PUBLIC HEARING HELD**

Present: (7) Representatives Kestell, Albers, Jeskewitz,
Vukmir, Sinicki, Miller and Krug.

Absent: (1) Representative Ladwig.

Appearances For

- Gary Radloff, DHFS
- Liz Marquardt, Wisconsin Coalition Against Domestic Violence
- Margaret Hickey, State Bar of Wisconsin
- Julie Lassa, State Senator, 24th Senate District

Appearances Against

- None.

Appearances for Information Only

- None.

Registrations For

- Mark Pettis, State Representative, 28th Assembly District

Registrations Against

- None.

October 30, 2003 **EXECUTIVE SESSION HELD**

Present: (7) Representatives Kestell, Albers, Jeskewitz,
Vukmir, Sinicki, Miller and Krug.

Absent: (1) Representative Ladwig.

Moved by Representative Jeskewitz, seconded by Representative Krug that **LRB 1619** be recommended for introduction.

Ayes: (7) Representatives Kestell, Albers, Jeskewitz,
Vukmir, Sinicki, Miller and Krug.

Noes: (0) None.

Absent: (1) Representative Ladwig.

INTRODUCTION OF LRB 1619 RECOMMENDED, Ayes 7,
Noes 0

Moved by Representative Jeskewitz, seconded by Representative
Krug that **LRB 1619** be recommended for adoption.

Ayes: (6) Representatives Kestell, Jeskewitz, Vukmir,
Sinicki, Miller and Krug.

Noes: (1) Representative Albers.

Absent: (1) Representative Ladwig.

LRB 1619 ADOPTION RECOMMENDED, Ayes 6, Noes 1

Moved by Representative Jeskewitz, seconded by Representative
Vukmir that **Assembly Bill 474** be recommended for passage as
amended.

Ayes: (7) Representatives Kestell, Albers, Jeskewitz,
Vukmir, Sinicki, Miller and Krug.

Noes: (0) None.

Absent: (1) Representative Ladwig.

PASSAGE AS AMENDED RECOMMENDED, Ayes 7, Noes 0

David Matzen
Committee Clerk

Vote Record

Committee on Children and Families

Date: 10-30-03
 Moved by: *Krueger* *J. Ferrel* Seconded by: *Krueger* *J. Ferrel*

AB 474 SB _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt 1
 A/S Amdt _____ to A/S Amdt _____ LRB1619
 A/S Sub Amdt _____
 A/S Amdt _____ to A/S Sub Amdt _____
 A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:
 Passage Adoption Confirmation Concurrence Indefinite Postponement
 Introduction Rejection Tabling Nonconcurrence

| <u>Committee Member</u> | <u>Aye</u> | <u>No</u> | <u>Absent</u> | <u>Not Voting</u> |
|---|-------------------------------------|--------------------------|-------------------------------------|--------------------------|
| Representative Steve Kestell | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Representative Bonnie Ladwig | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Representative Sheryl Albers | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Representative Suzanne Jeskewitz | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Representative Leah Vukmir | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Representative Christine Sinicki | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Representative Mark Miller | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Representative Shirley Krug | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Totals: | <u>7</u> | <u>0</u> | <u>1</u> | <u> </u> |

Vote Record

Committee on Children and Families

Date: 10-30-03

Moved by: Jeskewitz Seconded by: Krug

AB 474 SB Clearinghouse Rule
AJR Appointment
AR SR Other

A/S Amdt 1
A/S Amdt to A/S Amdt
A/S Sub Amdt
A/S Amdt to A/S Sub Amdt
A/S Amdt to A/S Amdt to A/S Sub Amdt

- Be recommended for:
[X] Passage [] Adoption [] Confirmation [] Concurrence [] Indefinite Postponement
[] Introduction [] Rejection [] Tabling [] Nonconcurrence

Table with 5 columns: Committee Member, Aye, No, Absent, Not Voting. Rows include Steve Kestell, Bonnie Ladwig, Sheryl Albers, Suzanne Jeskewitz, Leah Vukmir, Christine Sinicki, Mark Miller, Shirley Krug, and Totals (6, 1, 1).

Vote Record Committee on Children and Families

Date: 10-30-03

Moved by: Jeskewitz Seconded by: Vukmir

AB 474 SB _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt _____
 A/S Amdt _____ to A/S Amdt _____
 A/S Sub Amdt _____
 A/S Amdt _____ to A/S Sub Amdt _____
 A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for: *→ as amended*
 Passage Adoption Confirmation Concurrence Indefinite Postponement
 Introduction Rejection Tabling Nonconcurrence

| <u>Committee Member</u> | <u>Aye</u> | <u>No</u> | <u>Absent</u> | <u>Not Voting</u> |
|--|-------------------------------------|--------------------------|-------------------------------------|--------------------------|
| Representative Steve Kestell, Chair | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Representative Bonnie Ladwig | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Representative Sheryl Albers | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Representative Suzanne Jeskewitz | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Representative Leah Vukmir | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Representative Christine Sinicki | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Representative Mark Miller | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Representative Shirley Krug | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Totals: | <u>7</u> | <u>0</u> | <u>1</u> | <u> </u> |

Motion Carried Motion Failed

History of Assembly Bill 474

ASSEMBLY BILL 474

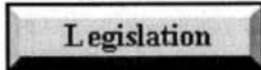
LC Amendment Memo

An Act to renumber 813.12 (7) (intro.), 813.12 (7) (a), 813.12 (7) (b), 813.122 (10) (intro.), 813.122 (10) (a), 813.122 (10) (b), 813.123 (9) (intro.), 813.123 (9) (a), 813.123 (9) (b), 813.125 (6) (intro.), 813.125 (6) (a) and 813.125 (6) (b); to amend 813.12 (7) (c); and to create 813.122 (10) (c), 813.123 (9) (c) and 813.125 (6) (c) of the statutes; relating to: notice for child abuse, vulnerable adult, and harassment injunctions.

2003

- 08-14. A. Introduced by Representatives Pettis, Hahn, Albers, Van Roy, Coggs, Hundertmark, F. Lasee, Kreibich and Bies; cosponsored by Senator Lassa.
- 08-14. A. Read first time and referred to committee on Children and Families 332
- 10-30. A. Public hearing held.
- 10-30. A. Executive action taken.
- 10-30. A. Assembly amendment 1 offered by committee on Children and Families 475
- 11-04. A. Report Assembly Amendment 1 adoption recommended by committee on Children and Families, Ayes 6, Noes 1 476
- 11-04. A. Report passage as amended recommended by committee on Children and Families, Ayes 7, Noes 0 476
- 11-04. A. Referred to committee on Rules 476

Search for another history



[Back to Legislation Page](#)



[Back to Legislature Home Page](#)





MEMORANDUM

October 23, 2003

TO: Assembly Members of the Committee on Children and Families

FROM: Patti Seger, Wisconsin Coalition Against Domestic Violence, Policy Development Coordinator

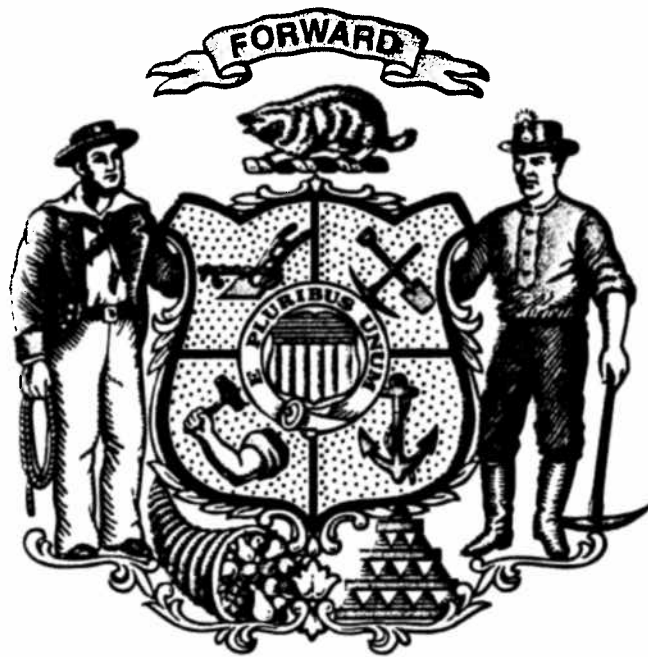
RE: In Support of Assembly Bill 474

The Wisconsin Coalition Against Domestic Violence (WCADV) is a statewide membership organization of battered women, formerly battered women, domestic abuse programs and individuals committed to ending domestic violence.

WCADV supports Assembly Bill 474, a bill that makes a child abuse injunction, vulnerable adult injunction, or harassment injunction effective as soon as the court issues it as long as the respondent to the order was served with the petition and notice of the time/place for the injunction hearing. Each of these injunctions result from a two-step process, first requiring that the respondent to the order be served with a temporary restraining order (TRO), affidavit containing allegations of abuse or harassing conduct, and a notice of injunction hearing including time and location. Many respondents whom have been served with proper notice of the TRO and hearing, fail to report for the hearing as a strategy for avoiding formal service of the final injunction. Respondents are aware that failure to appear at the hearing will result in the issuance of an injunction and willingly choose to waive their right to rebut the allegations made against them. In effect, they have "constructive knowledge" of the existence of the order, however, law enforcement and prosecution have been unable to enforce the order until it has been physically served on the respondent. Some respondents successfully avoid service for weeks, months, and sometimes the injunction expires before it has ever been served.

Restraining orders and injunctions are a critical tool used by victims of violent crime. In order to be effective, this tool must be as relevant, useful and enforceable as possible so that it truly contributes to the safety and well-being of the individual requesting the protection offered by restraining orders. When respondents purposely avoid service as a means to render injunctions unenforceable, it severely weakens the protection provided by victims of domestic violence. In 2002 reforms to domestic abuse restraining orders (§813.12) included language as proposed in AB 474. The changes allowing enforcement of domestic abuse injunctions to be enforced if the respondent failed to appear but had constructive knowledge of the existence of an injunction were implemented in July, 2002. Child abuse, harassment and vulnerable adult language should include the same protections.

On behalf of victims of violent crime seeking the protection offered by restraining orders, WCADV urges you to support AB 474. If you should have questions, please feel free to contact me at 608-255-0539.



MEMORANDUM

To: Members, Assembly Committee on Children and Families
From: Family Law Section,
State Bar of Wisconsin
Date: October 30, 2003
Re: Support for Assembly Bill 474, notice for child abuse, vulnerable adult,
and harassment injunctions.

Good morning. My name is Margaret Hickey. I am an attorney in private practice for 17 years and I practice primarily in family law, representing both men and woman, payers and payees. I have been active on family law and elder law issues for about a dozen years. I am the immediate past Chair of the Family Law Section and am a past Chair of the Elder Law Section.

Assembly Bill 474 would make a child abuse injunction, vulnerable adult injunction or a harassment injunction effective as soon as the court issues it, if the subject of the injunction was served with the petition and notice of the injunction hearing. Under current law, these three types of injunctions do not become effective until the subject is served with a copy of the injunction. This bill would allow these three types of injunctions to be treated the same way Domestic abuse injunctions are treated.

The Family Law Section of the State Bar **supports** Assembly Bill 474 on the ground that once the requirement of personal service on the subject of the injunction has been met and a judgment (i.e., an injunction) has issued, it should be effective just as any other default judgment is. The injunction seeker shouldn't have to wait until the actual injunction is served on the subject to gain protection. }

Not only does Assembly Bill 474 bring the statutes governing when child abuse harassment and vulnerable adult injunctions become effective into conformity with the statutes governing when injunctions for domestic abuse become effective, Assembly Bill 474 addresses a number of problems that arise under current law.

Current law requires a person seeking an injunction (the "petitioner") to serve the respondent twice, once when the temporary restraining order is issued and a hearing on the injunction request is scheduled, and a second time when the injunction is granted. This can be expensive for many petitioners. It also creates a potentially dangerous "loophole" situation in which the person who is the subject of the injunction may actually get a free opportunity to "violate" the injunction without being subject to arrest for that violation.

For example, in a harassment case. The legal process operates as follows: The action is commenced by filing a petition for a temporary restraining order (TRO) by a victim. Often, the court hears the petition on an *ex parte* basis, meaning that only one of the parties, i.e., the petitioner, is present in court. Notice need not be given to the respondent (the person against whom the order is sought). The court reviews the petition to make sure it contains the required elements, makes a finding that reasonable grounds exist to believe that the respondent violated the criminal harassment statute (section 947.013, Wis. Stats.), and then orders the respondent to cease or avoid the harassment of the petitioner. This may include ordering the respondent to avoid the petitioner's residence or any premises temporarily occupied by the petitioner.

The TRO remains in effect until a hearing is held on whether to issue an injunction (a more permanent order, which may last up to 4 years). At this point the TRO is issued along with a notice of the hearing, which must be held within seven days, unless an extension is granted under certain circumstances. Along with the TRO, the court attaches a copy of the original petition and a copy of the notice of the hearing on whether to issue an injunction. This is what is served on the respondent.

Upon being served, the subject of the TRO, (the respondent) is placed on notice that an injunction may be issued. The court has personal jurisdiction over the respondent at that point, the respondent has actual notice and has an opportunity to participate and be heard in order to protect his or her due process interests. The Family Law Section believes that this provides sufficient protection and notice to the respondent and properly places the burden on the respondent to indeed respond.

Because under current law, the TRO is only in effect until the hearing is held on whether to issue the injunction, and the injunction does not become effective until it is served on the respondent, a respondent who avoids the hearing can avoid being subject to the injunction. Sometimes a respondent who is angered by the petitioner's action will take steps to intimidate the petitioner by breaking into the petitioner's residence. If the parties are married or have been cohabiting, the police may be reluctant to arrest the respondent for what is in essence "breaking into his or her own residence." Because the respondent hasn't yet been served with the injunction, he or she may not be arrested for violating the injunction. If the injunction was in effect, the respondent would be subject to mandatory arrest and would face a misdemeanor prosecution under which he or she could be fined up to \$1,000 or imprisoned for up to 90 days or both. Because the respondent is not bound by the injunction until it is served on him or her, the respondent can thus get a "free opportunity" to confront, intimidate or harass the victim under current law.

These injunctions address serious behaviors. If such injunctions are granted, they should become immediately effective. Due process has been served by providing the respondent notice of and an opportunity to be heard at the hearing on the injunction. If he or she fails to appear, and the injunction is issued no additional notice should be required. By requiring the additional notice through service of the injunction, the current law is protecting the respondent at the risk of putting victims in harm's way.

If you have any questions, please feel free to contact Dan Rossmiller, Public Affairs Director of the State Bar of Wisconsin, at (608) 250-6140.





State of Wisconsin
Department of Health and Family Services

Jim Doyle, Governor
Helene Nelson, Secretary

October 30, 2003

To: Members of the Assembly Children and Families Committee

**From: Gary Radloff, Legislative Liaison
Department of Health and Family Services**

Re: Assembly Bill 474

Thank You Chairman Kestell and members of the Assembly Children and Families Committee. I am Gary Radloff, Legislative Liaison with the Department of Health and Family Services and I am here today to speak in favor of Assembly Bill 474.

- Restraining orders have been an extremely valuable tool in providing safety for victims of domestic abuse.

Victims gained an additional measure of safety last year when the restraining order law was changed to allow an injunction to become effective as soon as the court issues it, as long as the respondent was served with the petition and notice of time for the hearing. AB 474 will allow

child abuse, vulnerable adult, and harassment restraining orders to follow suit.

- Experience in the domestic abuse field showed that it could often be very difficult to locate the respondent of a domestic abuse injunction in order to serve the injunction. Many abusers simply chose not to be found in order to avoid service.
- Previously in domestic situations, if the respondent failed to attend the injunction hearing, the petitioner could request the court to order the sheriff to serve the injunction, or pay for a private process server at her/his own expense.

- In many counties, particularly small, rural ones, the sheriff's department simply does not have the person power to seek out and find a person avoiding service. Nor do many victims have the financial resources to hire a process server.
- Although additional safety planning is always essential, many victims of domestic abuse experience a sense of relief when the injunction is in place. Once the order is effective, an arrest can be made for any attempted violation. Domestic abuse programs in various parts of the state report that law enforcement is also pleased with the added measure of protection.
- We know that there is a huge overlap between domestic violence and child abuse. Studies have found that the rate

of child abuse in families experiencing domestic violence is between 30 – 60%. Many of the dynamics present in domestic abuse will also affect families experiencing child maltreatment.

- It is important in child abuse situations that the protective capacity of a restraining order be effective immediately. Vulnerable adults and those experiencing harassment are no less deserving of this protection.



Testimony of Liz Marquardt
on behalf of the Wisconsin Coalition Against Domestic Violence and
the Task Force on Family Violence of Milwaukee
October 30, 2003
Committee on Children and Families

I'm here to testify in support of AB 474. I am representing the Wisconsin Coalition Against Domestic Violence, a statewide membership organization, and the Task Force on Family Violence of Milwaukee. At the Task Force, we provide legal advocacy to the highest number of victims seeking restraining orders in Wisconsin. We provide assistance with Domestic Abuse, Harassment, and Child Abuse restraining orders in Milwaukee County, totaling about 5000 victims annually, approaching 90,000 victims since 1986.

The changes that AB 474 proposes are needed to protect victims of child abuse and harassment by making it easier for victims to get enforcement assistance with their Injunctions and by giving law enforcement the necessary tools to hold offenders accountable.

While strengthening protections for victims, AB 474 preserves the rights of accused offenders to object to orders filed against them and maintains procedures for challenging orders issued in error. It simply prevents an offender who tried to avoid responsibility by dodging service of an Injunction from being able to do so.

If AB 474 passes, in order for an offender to be subject to a mandatory arrest for a violation of a Child Abuse or Harassment Injunction, he or she must have been given proper notice of the temporary restraining order and potential consequences of failing to appear at the Injunction hearing. When a similar provision applying to Domestic Abuse Injunctions went into effect last July, the forms committee added language to the "Notice of Hearing" to make perfectly clear to offenders what those consequences are. Similar changes to Child Abuse and Harassment forms will result from the passage of AB 474.

Under current law, the requirement that the respondent be served a second time can be a burden for victims and can compromise their safety. Once an abuser is served with a temporary restraining order, he or she may consciously avoid receiving the final Injunction. In addition to those who actively avoid service, some respondents are difficult to locate because they have moved, changed jobs, or altered their schedule. Victims living in rural areas may be left unprotected because the Sheriff's Department has such a large territory, and resources are stretched. Victims in urban areas may be left unprotected because an abuser can easily disappear in the city, and resources are stretched here, as well. The time, energy, and, sometimes, expense of serving the abuser a second time adds an unfair burden to victims. In addition, under current law, if the subject of a Child Abuse or Harassment Injunction violates the terms of the Injunction before being served, he or she is not arrested, but rather served with it. This sends a strong message to both abusers and victims that there is "one more chance" to abuse before the system will hold the abuser accountable.

Lastly, making the laws governing Child Abuse and Harassment restraining orders consistent with Domestic Abuse restraining orders simplifies court and law enforcement procedures, making both more efficient. Applying different standards and procedures to different orders unnecessarily complicates procedures and increases the opportunity for error. I am aware that the other bill introduced to address the consistency issue, AB 376, is not in this committee, but it is equally important to the court process, by allowing the courts to schedule hearings up to fourteen days after the temporary restraining order is heard. This adds time to accomplish service. It also minimizes the need to adjourn hearings for non-service and frees up court time. For victims, the additional visit to court can be a burden, costing them anxiety, child care and transportation costs, and time away from work, school, or other obligations.

Please vote in favor of AB 474 for victims, for law enforcement, and for the courts.





**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2003 Assembly Bill 474

Assembly Amendment 1

Memo published: November 11, 2003

Contact: Anne Sappenfield, Senior Staff Attorney (267-9485)

Current law allows a court to impose four types of restraining orders: domestic abuse, child abuse, vulnerable adult, and harassment. For each type, 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. The hearing for a child abuse, vulnerable adult, or harassment injunction must be held within seven days after the temporary restraining order is issued. The injunction hearing for a domestic abuse injunction must be held within 14 days after the temporary restraining order is issued.

A person who knowingly violates a domestic abuse, child abuse, vulnerable adult, or harassment temporary restraining order or injunction is subject to a criminal penalty. For a domestic abuse injunction, a respondent, or subject of an injunction, who does not appear at the injunction hearing, but who has been served with a copy of the petition and notice of the time of the hearing, is deemed to have constructive knowledge of the existence of the injunction and must be arrested for a violation of the injunction regardless of whether he or she has been served with a copy of the injunction.

Assembly Bill 474 provides that, as for domestic abuse injunctions, the subject of a child abuse, vulnerable adult, and harassment injunction has constructive knowledge of the injunction if he or she has been served with a copy of the petition and notice of the hearing even if the person does not appear at the hearing.

Assembly Amendment 1 provides that an injunction hearing for a harassment injunction must be held within 14 days after the temporary restraining order is issued, instead of seven days.

The Assembly Committee on Children and Families recommended adoption of Assembly Amendment 1 on a vote of Ayes, 6, Noes, 1 on October 30, 2003. The committee also recommended passage of the bill, as amended, on a vote of Ayes, 7, Noes, 0 on that date.

AS:wu