



## 2007 ASSEMBLY BILL 778

February 8, 2008 - Introduced by Representatives ALBERS, TURNER, JESKEWITZ, OWENS, VAN ROY and HAHN, cosponsored by Senator SCHULTZ. Referred to Committee on Criminal Justice.

1     **AN ACT to amend** 813.122 (2), 813.122 (7) and 813.122 (10) (a); and **to create**  
2             813.122 (2m), 813.122 (4) (am), 813.122 (5) (am), 813.122 (5) (dm) and 813.122  
3             (6) (am) of the statutes; **relating to:** petitions for child abuse restraining orders  
4             and injunctions by district attorneys.

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### *Analysis by the Legislative Reference Bureau*

Under current law, a child who is or may be subject to abuse, or his or her parent, stepparent, or guardian, may petition the circuit court for a temporary restraining order and injunction against the person who has or may commit the abuse. Currently, a petition is filed alleging that the respondent engaged in or may engage in abuse of the child, and the judge or court commissioner holds a hearing to determine if reasonable grounds exist to believe that the respondent has or may engage in abuse of the child. Notice of the hearing need not be given to the respondent under current law. If reasonable grounds exist, the judge or court commissioner issues a temporary order requiring the respondent to avoid the child's residence and contact with the child. A hearing for a permanent injunction is then scheduled and the respondent is served with notice of that hearing. If the respondent has been served with notice of the hearing, and there are reasonable grounds exist to believe that the respondent has or may engage in abuse of the child, the judge orders a permanent injunction against the respondent to avoid the child's residence and contact with the child. The permanent injunction is in effect for two years or until the child attains 18 years of age, whichever occurs first, but the court may extend the injunction for another two years.

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This bill allows a district attorney to petition the court for a child abuse temporary restraining order and injunction against an adult who has committed child abuse in the past if the district attorney determines that children are at risk of being abused by that adult. The district attorney has to follow the same procedures to obtain a temporary restraining order and permanent injunction, including showing that the person may engage in abuse of a child, but need not specify that a particular child needs protection. However, the district attorney must also show that the respondent has engaged in child abuse in the past. If the judge or court commissioner determines reasonable grounds exist to believe that the respondent has engaged in abuse of a child and may engage in child abuse in the future, the judge or court commissioner may issue a restraining order and the judge may issue an injunction requiring the respondent to avoid places where children are known to be present and to avoid contact with children. The injunction may be for up to four years and may be extended by the court.

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

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

2           813.122 (2) COMMENCEMENT OF ACTION AND RESPONSE. No action under this  
3 section may be commenced by complaint and summons. An action under this section  
4 may be commenced only by a petition described under sub. (6) (a). The action  
5 commences with service of the petition upon the respondent if a copy of the petition  
6 is filed before service or promptly after service. The Except as provided in sub. (2m),  
7 the child victim or a parent, stepparent or legal guardian of the child victim may be  
8 a petitioner under this section. Section 813.06 does not apply to an action under this  
9 section. The respondent may respond to the petition either in writing before or at  
10 the hearing on the issuance of the injunction or orally at that hearing.

11           **SECTION 2.** 813.122 (2m) of the statutes is created to read:

12           813.122 (2m) PETITION BY DISTRICT ATTORNEY. If the district attorney determines  
13 that children are at risk of child abuse by a specific adult, the district attorney may

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1 petition the court under this section for a temporary restraining order and injunction  
2 against that adult.

3 **SECTION 3.** 813.122 (4) (am) of the statutes is created to read:

4 813.122 (4) (am) Notwithstanding par. (a), a judge or circuit court  
5 commissioner shall issue a temporary restraining order ordering the respondent to  
6 avoid places where children are known to be present, as specified by the judge or  
7 court commissioner, and contact with children, if all of the following occur:

8 1. The district attorney files a petition alleging the elements set forth under  
9 sub. (6) (a) 1. to 3. and (am), except the name of a child victim.

10 2. The judge or circuit court commissioner finds reasonable grounds to believe,  
11 based on prior conduct of the respondent, that the respondent may engage in abuse  
12 of a child.

13 3. The judge or circuit court commissioner finds reasonable grounds to believe  
14 that the respondent has engaged in child abuse in the past.

15 **SECTION 4.** 813.122 (5) (am) of the statutes is created to read:

16 813.122 (5) (am) Notwithstanding par. (a), a judge may grant an injunction  
17 ordering the respondent to avoid places where children are known to be present, as  
18 specified by the judge, and contact with children, if all of the following occur:

19 1. The district attorney files a petition alleging the elements set forth under  
20 sub. (6) (a) 1. to 3. and (cm), except the name of a child victim.

21 2. The district attorney serves upon the respondent a copy of the petition and  
22 notice of the time for hearing on the issuance of the injunction, or the respondent  
23 serves upon the district attorney notice of the time for hearing on the issuance of the  
24 injunction.

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1           3. After hearing, the judge finds reasonable grounds to believe, based upon  
2 prior conduct of the respondent, that the respondent may engage in abuse of the child  
3 victim.

4           4. The judge finds reasonable grounds to believe that the respondent has  
5 engaged in child abuse in the past.

6           **SECTION 5.** 813.122 (5) (dm) of the statutes is created to read:

7           813.122 (5) (dm) Notwithstanding par. (d), if the district attorney petitions the  
8 court for a child abuse injunction under sub. (2m), the injunction under this  
9 subsection is effective according to its terms, but for not more than 4 years. If the  
10 district attorney determines that an extension is necessary to protect children, he or  
11 she may petition the court for an extension. Notice need not be given to the  
12 respondent before extending an injunction under this paragraph. The district  
13 attorney shall notify the respondent after the court extends an injunction under this  
14 paragraph.

15           **SECTION 6.** 813.122 (6) (am) of the statutes is created to read:

16           813.122 (6) (am) Notwithstanding par. (a), if the petitioner is the district  
17 attorney, the petition shall include facts sufficient to show that the respondent has  
18 engaged in child abuse in the past, but need not include the name of a child victim  
19 or the facts sufficient to show the facts under par. (a) 4.

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

21           813.122 (7) CONTACT. Any order under this section directing a person to avoid  
22 contact with a child victim or children prohibits the person from knowingly touching,  
23 meeting, communicating or being in visual or audio contact with the child victim or  
24 children, except as provided in any modifications of the order under sub. (5) (b).

25           **SECTION 8.** 813.122 (10) (a) of the statutes is amended to read:

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1           813.122 (10) (a) A petitioner under sub. (6) (a) or (am) presents the law  
2 enforcement officer with a copy of an order issued under sub. (4) or (5), or the law  
3 enforcement officer determines that such an order exists through communication  
4 with appropriate authorities.

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(END)