

1985 Wisconsin Act 234

AN ACT to create 46.03 (7) (d), 48.25 (6), 48.981 (3) (c) 9 and (7) (cm), 757.69 (1) (j), 801.50 (5s), 813.122 and 813.127 of the statutes, relating to child abuse and related restraining orders and injunctions and providing a penalty.

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

SECTION 1. 46.03 (7) (d) of the statutes is created to read:

46.03 (7) (d) With the assistance of the judicial conference, develop simplified forms for filing petitions for child abuse restraining orders and injunctions under s. 813.122. The department shall provide these forms to clerks of circuit court without cost.

SECTION 2. 48.25 (6) of the statutes is created to read:

48.25 (6) If a proceeding is brought under s. 48.13, any party to or any governmental or social agency involved in the proceeding may petition the court to issue a temporary restraining order and injunction as provided in s. 813.122. The court exercising jurisdiction under this chapter shall follow the procedure under s. 813.122 except that the court may combine hearings authorized under s. 813.122 and this chapter, the petitioner for the temporary restraining order and injunction is not subject to the limitations under s. 813.122 (2) and no fee is required regarding the filing of the petition under s. 813.122.

SECTION 3. 48.981 (3) (c) 9 and (7) (cm) of the statutes are created to read:

48.981 (3) (c) 9. The county agency may petition for child abuse restraining orders and injunctions under s. 48.25 (6).

(7) (cm) A county agency may disclose information from its records for use in proceedings under s. 48.25 (6) or 813.122.

SECTION 4. 757.69 (1) (j) of the statutes is created to read:

757.69 (1) (j) Hold hearings, make findings and issue temporary restraining orders under s. 813.122.

SECTION 5. 801.50 (5s) of the statutes is created to read:

801.50 (5s) Venue of an action under s. 813.122 shall be in the county in which the cause of action arose or where the petitioner or the respondent resides.

SECTION 6. 813.122 of the statutes is created to read:

813.122 Child abuse restraining orders and injunctions. (1) **DEFINITIONS.** In this section:

(a) "Abuse" means any of the following:

1. Physical injury inflicted on a child by other than accidental means.

2. Sexual intercourse or sexual contact under s. 940.225.

3. A violation of s. 940.203.

4. Permitting or requiring a child to violate s. 944.30.

5. Emotional damage.

6. A threat to engage in any conduct under subds. 1 to 5.

(b) "Child" means any person under 18 years of age.

(c) "Child victim" means the child who is the victim or the alleged victim of abuse.

(d) "Child victim advocate" means any person who counsels child victims, assists child victims in coping with the impact of the crime or otherwise acts in support of child victims.

(e) "Emotional damage" means harm to a child's psychological or intellectual functioning which is exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which is caused by the child's parent, guardian, legal custodian or other person exercising temporary or permanent control over the child and for which the child's parent, guardian or legal custodian has failed to obtain the treatment necessary to remedy the harm.

(f) "Physical injury" includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe or frequent bruising or great bodily harm as defined under s. 939.22 (14).

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

(3) **GENERAL PROCEDURE.** (a) Procedure for an action under this section is in 2 parts. First, if the peti-

tioner requests a temporary restraining order, the court or court commissioner shall issue or refuse to issue that order. Second, the court shall hold a hearing under sub. (5) on whether to issue an injunction, which is the final relief. If the court or court commissioner issues a temporary restraining order, the order shall set forth the date for the hearing on an injunction. If the court or court commissioner does not issue a temporary restraining order, the date for the hearing shall be set upon motion by either party.

(b) The court or court commissioner, on its own motion or the motion of any party, may order one or more of the following:

1. That a guardian ad litem be appointed for the child victim in accordance with s. 48.235.

2. That all persons, other than the parties, their attorneys, witnesses, child victim advocates, court personnel and any guardian ad litem, be excluded from any hearing under this section.

3. That access to any record of an action under this section be available only to the parties, their attorneys, any guardian ad litem, court personnel and any applicable court upon appeal.

(c) An action under this section may pertain to more than one child victim.

(4) TEMPORARY RESTRAINING ORDER. (a) A judge or court commissioner shall issue a temporary restraining order ordering the respondent to avoid the child victim's residence or any premises temporarily occupied by the child victim or both, and to avoid contacting or causing any person other than a party's attorney to contact the child victim unless the petitioner consents in writing and the judge or court commissioner agrees that the contact is in the best interests of the child victim, if all of the following occur:

1. The petitioner submits to the judge or court commissioner a petition alleging the elements set forth under sub. (6) (a).

2. The judge or court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the child victim and the respondent may engage in, abuse of the child victim.

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

(c) The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub. (5). A judge shall hold a hearing on issuance of an injunction within 7 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties or extended once for 7 days upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence.

(5) INJUNCTION. (a) A judge may grant an injunction ordering the respondent to avoid the child victim's residence or any premises temporarily occupied by the child victim or both, and to avoid contacting or causing any person other than a party's attorney to contact the child victim unless the petitioner consents to that contact in writing and the judge agrees that the contact is in the best interests of the child victim, if all of the following occur:

1. The petitioner files a petition alleging the elements set forth under sub. (6) (a).

2. The petitioner serves upon the respondent a copy of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of the time for hearing on the issuance of the injunction.

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

(b) If the respondent is the parent of the child victim, the judge shall modify the order under par. (a) to provide the parent reasonable visitation rights, unless the judge finds that visitation would endanger the child's physical, mental or emotional health. The judge may provide that any authorized visitation be supervised.

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

(d) 1. An injunction under this subsection is effective according to its terms, but for not more than 2 years or until the child attains 18 years of age, whichever occurs first.

2. When an injunction in effect for less than 6 months expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect the child victim. This extension shall remain in effect until 6 months after the date the court first entered the injunction or until the child attains 18 years of age, whichever occurs first.

3. If the petitioner states that an extension is necessary to protect the child victim, the court may extend the injunction for not more than 2 years or until the child attains 18 years of age, whichever occurs first.

4. Notice need not be given to the respondent before extending an injunction under subd. 2 or 3. The petitioner shall notify the respondent after the court extends an injunction under subd. 2 or 3.

(e) An injunction under this section may direct the payment of child support using a method of calculation authorized under s. 767.25.

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

1. The name of the petitioner and the child victim.

2. The name of the respondent and that the respondent is an adult.

3. That the respondent engaged in, or based on prior conduct of the respondent and the child victim may engage in, abuse of the child victim.

4. If the payment of child support is requested, that the payment of child support is reasonable or necessary based on criteria provided under s. 767.25.

(b) Upon request, the clerk of circuit court shall provide, without cost, the simplified forms obtained under s. 46.03 (7) (d) to a petitioner.

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

(8) EVIDENCE RELATING TO EMOTIONAL DAMAGE. In an action under this section alleging that emotional damage has occurred or may occur, the court may admit evidence of a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child's age and stage of development.

(9) ENFORCEMENT ASSISTANCE. (a) If an order is issued under this section, upon request by the petitioner, the court or court commissioner, as applicable, shall order the sheriff to assist in executing or serving the temporary restraining order or injunction.

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

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

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

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

(b) The law enforcement officer has probable cause to believe that the person has violated the order issued under sub. (4) or (5).

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

SECTION 7. 813.127 of the statutes is created to read:

813.127 Combined actions; domestic abuse, child abuse and harassment. A petitioner may combine in one action 2 or more petitions under one or more of the provisions in ss. 813.12, 813.122 and 813.125 if the respondent is the same person in each petition. In any such action, there is only one fee applicable under s. 814.61 (1) (a). In any such action, the hearings for different types of temporary restraining orders or injunctions may be combined.

SECTION 8. **Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
813.06	s. 813.12	ss. 813.12, 813.122 and 813.125