

Individuals-at-Risk Restraining Order*
and Injunction Checklist
Sec. 813.123, Wis. Stats.

This document, created by the Wisconsin Coalition Against
Domestic Violence Legal Department,
does not constitute legal advice.

*Materials adapted by
Attorney Betsy Abramson and Jane Raymond*

1. What is a restraining order? What is an injunction?

A restraining order is more accurately called a “temporary restraining order.” It is also called a “TRO” (each letter is pronounced separately). A temporary restraining order is a court order that may remain in effect no longer than seven days unless extended by the court. At the end of this period, the order either ends or is replaced by another court order called an injunction. An injunction can last up to four years. Both types of orders require the respondent to stop engaging in specific behavior for the time period noted in the order. If a respondent violates an order, he or she may be arrested, fined or imprisoned.

2. Who may petition for an individual at risk restraining order?

- See Sec. 813.123(2)(a), Wis. Stats.
- a. An individual at risk (See definitions, page 4, for “adult at risk” and “elder adult at risk”)
- b. Any person acting on behalf of an individual at risk, an elder-adult-at-risk agency or an adult-at-risk agency. *NOTE: It is very unusual for someone other than the victim to pursue a restraining order. Under this law, if someone other than the victim is seeking the restraining order, then: (1) the petitioner must give notice to the individual on whose behalf the restraining order is sought; and (2) the court must appoint a guardian ad litem to independently investigate and report to the court whether issuance of the order is in the individual’s “best interests.”*

3. What type of abuse must be alleged in the petition to obtain a temporary restraining order or injunction?

- See Secs. 813.123(4)(a)2.a, 813.123(4)(a)2.b, Wis. Stats. Secs. 55.05, 55.06, 46.90(5m), Wis. Stats.
- a. Interference with, or based on prior conduct of the person, the person may interfere with, an investigation of the individual at risk, the delivery of protective services to the individual-at-risk under sec. 55.05, the delivery of protective placement under sec. 55.06, or the delivery of services to an elder adult at risk under sec. 46.90(5m); and

- b. If continued, the interference would make it difficult to determine whether abuse, financial exploitation, neglect, or self-neglect has occurred, is occurring, or may recur; or
- c. "Abuse," financial exploitation, neglect, harassment, or stalking of an individual at risk or the mistreatment of an animal, or threats of such behavior – See *definitions on page 4.*

4. Where may an individual at risk restraining order petition be filed?

- See Secs. 801.50(2)(a) and (2)(c), Wis. Stats.
 - a. County where the claim arose; or
 - b. County where the defendant (respondent) resides.

5. What will it cost to file an individual at risk restraining order petition?

- See Secs. 814.61(1)(d) and 814.70, Wis. Stats.
There is no cost to file the petition, serve the petition for travel costs to serve the petition.

6. What must a court find (i.e., determine or conclude) to order an individual at risk restraining order?

- See Secs. 813.123(4)(a) and (ar), Wis. Stats.
 - a. That all the allegations in the petition are true.
 - b. That if someone other than the individual at risk is the petitioner:
 - 1. The petitioner gave notice of the petition to that individual at risk.
 - 2. The court appointed a guardian ad litem for the individual at risk.
 - 3. Whether or not the individual at risk is objecting, the guardian ad litem believes it is in the individual at risk's best interests for the temporary restraining order to be issued and the court agrees.

7. What may a court order if the petition is granted?

- See Secs. 813.123(4)(a) and (ar), Wis. Stats.

A court may order the abuser to:

- a. Avoid interference with an investigation of the elder adult at risk or adult at risk, the delivery of protective services or protective placement under ch. 55, Wis. Stats., of the individual at risk, or the delivery of services to the elder adult at risk under sec. 46.90(5m).
- b. Cease engaging in or threatening to engage in the abuse, financial exploitation, neglect, harassment or stalking of an individual at risk or mistreatment of an animal.

- c. Avoid the residence of the individual at risk or any other location temporarily occupied by the individual at risk or both.
- d. Avoid contacting or causing any person other than a party's attorney or a law enforcement officer to contact the individual at risk.
- e. Engage in any other appropriate remedy not inconsistent with those requested in the petition.

8. Where can the form for the petition be located?

Forms may be obtained from the County Clerk of Courts office or from www.wicourts.gov – look for the link to “Forms” and then to “Circuit Court.”

9. How are individual-at-risk TROs and injunctions served and enforced?

- See Wis. Stat. § 813.123(8) and (9) Provisions for enforcement of the TRO or injunction include:
 - a. Service by sheriff. If a TRO or injunction is ordered by the court, and the petitioner requests, the court must order the sheriff to assist in serving the order on the respondent. If the order is a TRO, the sheriff should be able to serve notice of the petition and the time for the hearing on the injunction at the same time as the TRO is served.
 - b. Availability of information to local law enforcement. No later than the next business day after a TRO or injunction is issued, extended, modified, or terminated, the clerk of court must send a copy of the order to the sheriff and to any other local law enforcement agency that is responsible for acting as a central repository for orders. No later than 24 hours after this is done, the information must be entered into a computerized database, and information on the existence and status of the order must be made available to other law enforcement agencies.
 - c. Mandatory arrest. A law enforcement officer who is presented with a copy of the order, and confirms that it exists, must arrest the respondent and take him or her into custody if he or she has probably cause to believe that the respondent has violated the order.
 - d. Violation of an order is punishable by a fine of up to \$1000, and imprisonment for up to 9 months.

INDIVIDUAL-AT-RISK RESTRAINING ORDER PETITION DEFINITIONS

Adult at Risk – any adult who have a physical or mental condition that substantially impairs his or her ability to care for his or her needs who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, or financial exploitation.

Elder adult at risk— any person age 60 or older who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation.

Individual at risk means an elder adult at risk or an adult at risk. § 813.123(1)(ep), Wis. Stats.

Abuse includes:

Physical Abuse means: Intentional or reckless infliction of bodily harm

Emotional Abuse means: “Language or behavior that serves no legitimate purpose and is intended to be intimidating, humiliating, threatening, frightening, or otherwise harassing, and that does or reasonably could intimidate, humiliate, threaten, frighten, or otherwise harass the individual to whom the conduct or language is directed.”

Sexual abuse means the violation of §§ 940.225(1), (2), (3) or (3m) (criminal sexual assault law), sec. 46.90(1)(gd), Wis. Stats.

Treatment without Consent includes the administration of medication to an individual who has not provided informed consent, or the performance of psychosurgery, electroconvulsive therapy, or experimental research on an individual who has not provided informed consent, with the knowledge that no lawful authority exists for the administration or performance.

Unreasonable confinement or restraint includes the intentional and unreasonable confinement of an individual in a locked room, involuntary separation of an individual from his or her living area, use on an individual of physical restraining device, or the provision of unnecessary or excessive medication to an individual, but does not include the use of these methods or devices, in entities regulated by the department if the methods or devices are employed in conformance with state and federal standards governing confinement and restraint.” § 46.90(1)(i), Wis. Stats.

Caregiver means a person who has assumed responsibility for all or a portion of an individual's care voluntarily, by contract, or by agreement, including a person acting or claiming to act as a legal guardian. § 46.90(1)(an), Wis. Stats.

Financial Exploitation means ...any of the following: (1) Obtaining an individual's money or property by deceiving or enticing the individual, or by forcing, compelling, or coercing the individual to give, sell at less than fair market value, or in other ways convey money or property against his or her will without his or her informed consent; (2) Theft under § 943.20; (3) The substantial failure or neglect of a fiscal agent to fulfill his or he responsibilities; (4) Unauthorized use of an individual's personal identifying information or documents, as prohibited in § 943.201; (5) Unauthorized use of an entity's identifying information or documents, per § 943.203; (6) Forgery, per § 943.38; or (7) Financial transaction card crimes, per § 943.41.

Harassment has the meaning given in § 813.125 (1), Wis. Stats.

Mistreatment of an animal means cruel treatment of any animal owned by or in service to an individual at risk. § 813.123(1)(fm), Wis. Stats.

Neglect means the failure of a caregiver, as evidenced by an act, omission, or course of conduct, to endeavor to secure or maintain adequate care, services, or supervision for an individual, including food, clothing, shelter, or physical or mental health care, and creating significant risk or danger to the individual's physical or mental health. "Neglect" does not include a decision that is made to not seek medical care for an individual, if that decision is consistent with the individual's previously executed declaration or do-not-resuscitate order under ch. 154, a power of attorney for health care under ch. 155, or as otherwise authorized by law.

Stalking is a crime, and has the same definition under the restraining order statute as it does under the criminal statute. [§940.32 (1) (a), Wis. Stats.] Stalking is conduct that involves repeatedly going to places where the victim goes, contacting the victim, or his or her employer or co-workers, taking pictures of the victim or spying on the victim in other ways, sending things to the victim, and/or getting other people to do these things.