

**Individuals at Risk Restraining Order Wis. Stats. § 813.123
Frequently Asked Questions (FAQ)**

Prepared by

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April 21, 2010**

- 1. What is an Individual at Risk Restraining Order?** A court commissioner or judge issues a restraining order or injunction to prevent another person from hurting (through physical abuse, sexual abuse, emotional abuse, neglect, treatment without consent, or unreasonable confinement) or financially exploiting an individual at risk.

Getting an injunction is a two step process. First, a petitioner must obtain a temporary restraining order (“TRO”), which protects someone until a hearing occurs, usually within seven (7) days of the petition being filed. Second, after a hearing, a court commissioner or judge can order an **injunction, which can last up to four years**, to stop the abuser from harming the individual at risk or engaging in abusive conduct against the individual at risk.

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

- a. An individual at risk (See definitions, page 3, 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: This law permits someone other than the individual at risk to pursue a restraining order. However, if someone other than the individual at risk seeks the restraining order: (1) that person must give a copy of the petition to the individual at risk; and (2) the court must appoint a guardian ad litem, a lawyer who independently investigates and reports to the court whether issuing the order is in the individual at risk’s “best interests.”*
- See § 813.123(2)(a), Wis. Stats.

- 3. What type of abuse must the petitioner allege to obtain a temporary restraining order or injunction?**

- a. Abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk or the mistreatment of an animal – *See definitions on page 3.*
 - b. That the abuser (respondent) has interfered with (or based upon prior conduct may interfere with) an investigation or delivery of protective services to the individual at risk and that the interference, if continued, would make it difficult to determine if abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk or mistreatment of an animal is occurring or may recur.
- See Wis. Stats. §§ 813.123(4)(a)2.a, 813.123(4)(a)2.b; Wis. Stats. §§ 55.05, 55.06, 46.90(5m).

- 4. Where should the petitioner file the petition for an individual at risk restraining order?**

- a. The county where the abuse occurred; or
 - b. The county where the abuser (respondent) resides.
- See Wis. Stat. §§ 801.50(2)(a) and (2)(c).

5. Are there fees associated with an individual at risk restraining order petition?

- a. There is no cost to file the petition or for the sheriff's department to "serve" (personally deliver) the petition.
- b. In some counties the petitioner may be responsible for payment of the guardian ad litem fees. In other counties, the judge may order the county to pay these fees.
 - See Wis. Stats §§ 814.61(1)(d) and 814.70.

6. What is "service"? When and how does it occur?

- a. Service is a legal term that means giving notice of a court hearing to another person. The restraining order petition must be "served on" (personally delivered to) the abuser (respondent). Service must occur before the hearing on the injunction.
- b. The sheriff's department will serve the restraining order forms if the petitioner checks the correct box on the petition form. Or, the petitioner can have another individual serve the forms on the abuser (respondent).
 - See Wis. Stats. § 813.123(5).

7. What must a court find (i.e., determine or conclude) to order an injunction?

- a. If the individual at risk filed the petition: that all the allegations in the petition are true.
- b. If someone other than the individual at risk filed the petition, all of the following:
 1. That the allegations in the petition are true; and
 2. That either the petitioner gave or the sheriff delivered a copy of the petition to the individual at risk.; and
 3. That the court appointed a guardian ad litem for the individual at risk; and
 4. That the guardian ad litem believes it is in the individual at risk's best interests for the injunction to be issued; and
 5. The court agrees with the guardian ad litem.
 - See Wis. Stats. §§ 813.123(4)(a) and (ar).

8. What may a court order if it grants the petition?

A court may order the abuser (respondent) to:

- a. Stop 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.
- b. Stay away from the residence of the individual at risk or any other location temporarily occupied by the individual at risk or both.
- c. Not contact or have any person (other than a party's attorney or a law enforcement officer) contact the individual at risk (including in person, by telephone, e-mail or any other means).
- d. Stop interfering with an investigation of the individual at risk or the delivery of protective services to the individual at risk.
- e. Any other appropriate remedy (e.g., firearms surrender).
 - See Wis. Stats. §§ 46.90(5m), 55.05, 55.06, and 813.123(4)(a) and (ar).

INDIVIDUAL AT RISK RESTRAINING ORDER PETITION DEFINITIONS

Wis. Stats. §§ 46.90(1) and 55.01

“**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.

“**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 Wis. Stat. §§ 940.225(1), (2), (3) or (3m) (criminal sexual assault law), Wis. Stat. § 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.”

“**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 Wis. Stat. § 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 Wis. Stat. § 943.201; (5) Unauthorized use of an entity’s identifying information or documents, per Wis. Stat. § 943.203; (6) Forgery, per Wis. Stat. § 943.38; or (7) Financial transaction card crimes, per Wis. Stat. § 943.41.

“**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 Wis. Stat. ch. 154, a power of attorney for health care under Wis. Stat. ch. 155, or as otherwise authorized by law.