

## **PROCESS FOR OBTAINING A RESTRAINING ORDER IN WISCONSIN**

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

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Please note: The following pages contain detailed information on domestic abuse and harassment restraining orders. Wisconsin also has child abuse, individuals at risk and foreign protection restraining orders which are not discussed other than in Part One below. Because the majority of victims in Wisconsin (as in the nation) are women and the majority of abusers in Wisconsin (as in the nation) are men, the person seeking the restraining order is referred to as female (she, her or hers) and the person who is being ordered to have no contact as male (he, him or his). These pages are designed to give general information about Wisconsin's law. The specific procedure for obtaining a restraining order varies from county to county.

## **PART ONE: WHAT IS A RESTRAINING ORDER AND WHAT TYPES ARE THERE?**

A restraining order is a court order prohibiting one person from having contact with or taking some other action toward or against another person. In Wisconsin, there are five types of restraining orders for individuals seeking personal protection:

### **1. Domestic Abuse Restraining Order, [§813.12](#)**

An adult can obtain a domestic abuse restraining order against another adult for one of six reasons:

1. Intentional infliction of physical pain, physical injury or illness;
2. Intentional impairment of physical condition;
3. A violation of 1st, 2nd, 3rd or 4<sup>th</sup> degree sexual assault under [§940.225](#);
4. Damage to the property of that person;
5. Stalking under [§ 940.32](#);
6. A threat to engage in any of the conduct above in 1,2,3, 4, or 5.

### **2. Harassment Restraining Order, [§813.125](#)**

A person can obtain a harassment restraining order against another person if one of these circumstances occurs:

1. Striking, shoving, kicking or otherwise subjecting another person to physical contact or attempting or threatening to do the same, and
2. Engaging in a course of conduct or repeatedly committing acts which harass or intimidate another person and which serve no legitimate purpose;
3. Engaging in an act that would constitute abuse under [§48.02 \(1\)](#)[see child abuse restraining order definition below];

4. Sexual assault under [§940.225](#);

5. Stalking under [§940.32](#);

### **3. Child Abuse Restraining Order, [§813.122](#)**

A child abuse restraining order can be obtained by: a child victim; a parent; stepparent; a legal guardian of the child victim; or a guardian ad litem in a matter involving a child found to be in need of protection or services.

A child abuse restraining order can be obtained for any of these reasons:

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

2. Sexual intercourse or sexual contact under §§ [940.225](#) or [948.02](#);

3. Sexual exploitation of a child under [§948.05](#);

4. Permitting, allowing or encouraging a child to violate the prostitution statute, [§944.30](#);

5. Causing child to view or listen to sexual activity under [§948.055](#);

6. Causing a child to expose or exposing a child to one's genitals or pubic area under [§948.10](#);

7. Emotional damage;

8. Manufacturing methamphetamine in violation of [§961.41 \(1\) \(e\)](#) under any of the following circumstances: with a child physically present during the manufacture; in a child's home; on the premises of a child's home; or in a motor vehicle located on the premises of a child's home; or, *under any other circumstances in which a reasonable person should have known that the manufacture would be seen, smelled, or heard by a child*

9. The threat to engage in any of the conduct above.

### **4. Individuals at Risk Restraining Order, [§813.123](#)**

An individual at risk restraining order can be obtained by an individual at risk; any person acting on behalf of an individual at risk; an elder-adult-at-risk agency; or, an adult-at-risk agency against an adult for any of these reasons:

1. Interference with, or based on prior conduct of the person may interfere with, an investigation of the individual at risk, the delivery of protective services to the individual at risk under [§55.05](#), the delivery of protective placement under [§55.06](#), or the delivery of services to an elder adult at risk under [§46.90\(5m\)](#); **and** The interference complained of, if continued, would make it difficult to determine whether abuse, financial exploitation, neglect, or self-neglect has occurred, is occurring, or may recur;

2. Physical or emotional abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk or the mistreatment of an animal. See §§ [813.123\(4\)\(a\)2. a.](#) & [\(4\)\(a\)2. b.](#)

An **individual at risk** is defined in §[813.123\(1\)\(ep\)](#) to include both adults at risk and elder adults at risk.

An **adult at risk** is defined in §[55.01\(1e\)](#) as any adult who has 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.

An **elder adult at risk** is defined in §[46.90\(1\)\(br\)](#) as a person age 60 or older who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation.

## 5. Foreign Protection Order, §[813.128](#)

A foreign protection order (FPO) is defined in §[806.24\(1\)](#) as any temporary or permanent injunction or order of a civil or criminal court of the United States, of an Indian tribe, or of any other state, issued for preventing abuse, bodily harm, communication, contact, harassment, physical proximity, threatening acts or violence by or to a person, other than support or custody orders.

Section [806.24\(2\)](#) specifies that **full faith and credit** (which means honoring or enforcing an order which has been made by another court) is given to a foreign protection order (FPO) if the FPO is obtained after providing respondent an opportunity to be heard sufficient to protect his or her right to due process and if the issuing court had jurisdiction over the parties and the subject matter. §[806.24\(2\)](#) also says full faith and credit is not given to a FPO if there was no written pleading (such as a petition) seeking protection against the person or if the court ordered a mutual restraining order in a situation in which the court did not make a specific finding as to both parties.

Section [806.24\(3\)](#) says a copy of an FPO may be filed with the clerk of courts in any circuit court; however, an FPO does not have to be filed to be enforced. The clerk in any Wisconsin court is to treat a filed FPO as a judgment of the circuit court.

Section [813.128](#) states an FPO is to be enforced according to its terms. This means that if another state grants remedies that are not available under Wisconsin law, the law officer in Wisconsin is to enforce the provisions of the FPO as they would be enforced in that other state. Likewise, if a person has a valid restraining order from Wisconsin and travels to another state, the terms of the Wisconsin petition are to be enforced in that state as they would be in Wisconsin. This means if a petitioner from Wisconsin has a domestic abuse restraining order and travels to another state which does not have a mandatory firearms surrender provision in their restraining order law, a law officer in that other state must enforce Wisconsin's mandatory firearms surrender law even though such a provision is not available in that state.

Section [806.245\(6\)](#) states that Wisconsin Indian tribal orders are foreign protection orders

if they meet the requirements of [§806.245\(1\)](#) and are to be given full faith and credit. This means all Indian tribal orders are to be enforced anywhere in Wisconsin. NOTE: A tribal order might not contain the same provisions as restraining Orders under Chapter [806](#). Regardless, the tribal order is to be enforced according to its terms.

## **PART TWO: WHO ARE THE PARTIES TO A RESTRAINING ORDER?**

A person who seeks a restraining order is called a petitioner because that individual "petitions" the court to order another person to stay away from her. The person who receives the petition, saying that he is to stay away from the petitioner, is called the respondent because he has the opportunity "to respond" to the court as to what is said in the petition.

## **PART THREE: WHAT PROCESS IS USED TO OBTAIN A RESTRAINING ORDER?**

In Wisconsin, most people obtain a restraining order through a two-step process. The first step is to seek a temporary restraining order (TRO). If the TRO is granted, the second step is to hold an injunction hearing at a later date. This two-step process is described below. Most petitioners seek a temporary restraining order because they are in need of immediate protection. However, if the TRO is denied in a domestic abuse, child abuse or individual at risk restraining order, the petitioner can still request a date for an injunction hearing. The harassment restraining order law does not specify whether a petitioner can ask for an injunction hearing if the TRO is denied. Keep in mind that if the TRO is denied and a date is set for an injunction hearing, there is no guarantee that an injunction will be granted. (See Step Two below.)

### ***Step One: Temporary Restraining Order (TRO)***

First, the petitioner decides which type of restraining order pertains to her situation. The petition and any other forms (such as an instruction sheet) can be obtained at the courthouse (usually in the clerk of courts office or in the office of the judge or circuit court commissioner who conducts the hearing). In most counties, forms can also be obtained from the victim/witness program, or a domestic abuse program. Once the forms are completed, the petitioner takes them to the courthouse- either to a judge or circuit court commissioner, depending on that county's system. In some counties, the judge or circuit court commissioner is only available on certain days or during certain hours. Check beforehand to be certain if a judge or circuit court commissioner is available to help. (See Part Nine below.)

Once the circuit court commissioner or judge has been located, this person has the authority to issue a TRO if the requirements of the law have been met. (See Part Four below.) By law, either a judge or circuit court commissioner may grant a TRO for a domestic abuse restraining order. By law, either a judge or circuit court commissioner may grant a TRO for a harassment restraining order.

This first step is called a "temporary restraining order" (TRO) because the judge or circuit

court commissioner may only order no-contact or other protection on a temporary basis until the date of the injunction hearing, which must be within fourteen days. (See Part Four below for what information is requested in the petition.) If the TRO is granted, a date for the next step, called an injunction hearing, will be set. (See Step Two below.)

When the petitioner files a TRO, she may be asked questions about what she stated in the petition. (See Part Four below as to what information is requested in the petition.) At the time she files a petition, the circuit court commissioner or judge may ask the petitioner to show identification. A temporary restraining order hearing is called an *ex parte* hearing (meaning one party only) because only the petitioner is present; by law, the respondent does not have to be present when a TRO is issued.

In some counties, the petitioner will not appear in front of a circuit court commissioner or judge and will not be asked questions. Instead, the petitioner gives the petition to a staff person (often a clerk of court) who takes it to the judge or circuit court commissioner. The judge or circuit court commissioner will read the petition and decide whether to grant a TRO. The staff person then returns the petition to the petitioner with the court's decision.

It is important that the petitioner gives specific examples of the abuse and, if possible, the date(s) on which the abuse occurred. If the petitioner cannot recall an exact date, she can refer to a month, season or holiday period. If the petitioner has a medical or police report to verify the incident(s), it is sometimes helpful to bring them when filing for a TRO, but it is not necessary. Some petitioners are told that the court will only grant a petition if the latest incident of abuse occurred fairly recently in time. However, Wisconsin's domestic abuse restraining order law states in [§813.12\(3\)\(aj\)](#): "In determining whether to issue a temporary restraining order, the judge or circuit court commissioner shall consider the potential danger posed to the petitioner and the pattern of abusive conduct of the respondent but may not base his or her decision solely on the length of time since the last domestic abuse or the length of time since the relationship ended." [§§ 813.12\(3\)\(aj\)](#) and [813.12\(4\)\(aj\)](#) state that a court may not dismiss or deny granting a domestic abuse TRO or injunction just because the petitioner already has another order or pending action that prohibits any contact between the petitioner and the respondent. These sections also state that the court cannot dismiss or deny granting a domestic abuse TRO or injunction due to the necessity of verifying the terms of any other existing court orders. The harassment restraining order law does not address this issue.

The judge or circuit court commissioner can only grant a **domestic abuse** TRO if there is a finding of imminent danger of physical harm. Although the law does not require this, in some counties, a petition for a domestic abuse TRO needs to include facts that indicate the petitioner felt pain, the petitioner did not consent to the incident(s) and the petitioner feared for her safety because of the incident(s).

When filing a harassment restraining order, a petitioner can request that she not have to pay any filing fees for the temporary restraining order or for the permanent restraining order if the petitioner has no money. (This form is called an "affidavit of indigency," which means a legal document in which the petitioner states that she is very poor or has no extra money. See Part Five below for information about costs, including when there is no

cost to file a harassment restraining order.)

If the circuit court commissioner or judge decides to grant the TRO (which means to "give" the petitioner what she or he requested), the sheriff's department or another law enforcement agency who maintains the records of all restraining orders which have been filed in that county will serve the TRO on the respondent. The TRO states what the respondent is ordered to do or not to do. (See Part Seven below for information as to what the court can order.) The TRO also tells the respondent when the injunction hearing will be held. If the respondent wishes to do so, he can tell the court his side of the story at the injunction hearing. By law, a TRO can be in effect for no longer than fourteen days for a domestic abuse or harassment TRO and seven days for the other types of TROs unless the parties agree to an extension. This means that the court will schedule the injunction hearing within seven or fourteen days of the date that the petitioner receives the TRO. If an extension is granted, the TRO can be extended for another fourteen days for a harassment TRO or for a domestic abuse TRO.

If the petitioner files the petition in a county where the respondent does not work or reside, she should check with the sheriff's department in her county (where the petition is filed) as to whether they will deliver the petition or a summary of the petition to the sheriff's department in the respondent's county. By law, the court must have proof of service in order to conduct an injunction hearing; therefore, she may wish to take the petition to the sheriff's department in the respondent's county. In either case, she should ask his sheriff's department to give her written proof of service. This proof of service must be submitted to the court. (See Step Two below; also, see Part Five for information about fees, including the cost of serving the restraining order.) Although the process of informing the court that the respondent has been served varies from county to county, under state statute it is the petitioner's responsibility to be certain the court is informed.

### ***Step Two: Injunction Hearing to obtain a restraining order***

When the respondent receives the TRO, it tells him several things:

1. He is not to have any contact or he is not to engage in certain types of contact with the petitioner;
2. The types of abuse or harassment, which the petitioner says the respondent engaged in and when they happened;
3. The date (within seven to fourteen days of the date the TRO was granted) on which the court will hold an injunction hearing. The TRO tells the respondent that he has the right to appear at the injunction hearing to tell his story. The TRO will state who will conduct the hearing, which could be a circuit court commissioner or judge, dependent on the county's system.

By law, either a judge or family circuit court commissioner may conduct an injunction hearing for a domestic abuse restraining order. By law, either a judge or circuit court commissioner may conduct an injunction hearing for a harassment restraining order.

On the day of the injunction hearing, the petitioner must appear before the court at the

time and place stated in the notice of the hearing. A restraining order, which is known by law as an injunction, will not be granted unless the petitioner appears before the court. However, while the petitioner *must* be present, the respondent has *the right* to appear. The court will conduct the hearing whether or not the respondent is present unless the respondent has made a special request beforehand for a delay and the court has granted his request. By law, the respondent has the right to respond to the petition in person at the injunction hearing or in writing prior to the injunction hearing. The petitioner should check with the court beforehand as to whether the respondent has been served and whether he responded in writing so that the petitioner is aware of any possibility of a delay in the date of the injunction hearing.

The process used by the circuit court commissioner or judge at an injunction hearing varies from county to county. In some counties, the court may ask the respondent if he is in agreement with the request to have no contact with the petitioner. If he says yes, the court will probably grant the restraining order because the parties stipulated to an agreement. A stipulation is an agreement between the parties. If the parties stipulate to the injunction, the court will usually not have them take the stand and tell their stories. (NOTE: Parties are not required to stipulate to an agreement even if the court asks if they are willing to do so.)

At the injunction hearing, the circuit court commissioner or judge might allow both parties to testify, which means to tell her or his story. It is important for both parties to bring whatever information they have about the abusive incident(s). This information, which is called evidence, will determine whether the court will grant the injunction. This evidence might include witnesses to the event(s); tape recording(s); 911 tape; and any previous court finding of abuse, such as an injunction or criminal charge. The petitioner might also wish to tell the court about any medical treatment, police reports and weapons.

The court only wants to hear information related to the abusive event(s). In some counties, the court will only allow the parties to talk about abuse that is stated in the petition. This means the petitioner needs to include as many incidents of abuse as possible in the TRO petition.

If the court finds that the petition meets the mandates of the law, the judge or circuit court commissioner will order the restraining order, also known as an injunction. By law, a court can order an injunction for no more than four years for a domestic abuse or harassment injunction, and two years for an individual at risk or child abuse injunction. In a harassment restraining order, the court can grant the injunction for as much or as little time as the court wishes up to four years. In a domestic abuse injunction, the court is required by law to grant the order for the length of time which the petitioner requests up to four years.

Upon issuing any type of injunction or granting an extension of an injunction, if the court finds by a preponderance of the evidence that there is a substantial risk the respondent may commit first-degree intentional homicide under sec. [940.01](#) or second-degree intentional homicide under sec. 940.05 against the petitioner, or there is a substantial risk the respondent may commit sexual assault under secs. [940.225\(1\)](#), [\(2\)](#), or [\(3\)](#) or [948.02\(1\)](#) or [\(2\)](#) against the petitioner, the injunction may be in effect for a longer period

of time. The court may grant or extend a domestic abuse, individual at risk, or harassment injunction for up to an additional ten years, and a child abuse injunction for up to an additional five years.

At the end of the injunction hearing, the court will tell the parties whether an injunction is granted and for how long. Each party will be given a copy of the court's order. If the respondent is not at the hearing, it will be served on him by the sheriff's department or the law enforcement agency in the county that is responsible for recording and serving restraining orders.

It is *not* necessary that the respondent be served with a domestic abuse injunction for it to go into effect. If the respondent is not at the hearing, but has already received either the petition or a summary of the petition containing the date and time for the hearing, and the injunction is granted, then even if the respondent has not yet received a copy of the injunction, he is considered to already know that the injunction exists, and therefore, if he violates the injunction, prior to the receipt of the injunction paper, he can be arrested. This is known as constructive knowledge.

If the court grants a domestic abuse restraining order, the petitioner can request the court to order the sheriff to accompany the petitioner and assist in placing her in physical possession of her residence. The petitioner can also ask the court to order the sheriff to accompany her while she removes items from the residence or while the respondent removes possessions from the residence. The petitioner **MUST** request this assistance on the petition form or at the time of the injunction hearing.

By law, a court at a domestic abuse injunction hearing may not make any orders about custody or physical placement of the child(ren). However, the court might specify on the order that the parties may have contact with a third party in order to make such arrangements. Also, the court may specify types of contact which the parties may need to have with a third party, such as sessions with the family court counseling office if a divorce is underway.

#### **PART FOUR: WHAT INFORMATION IS REQUESTED IN A PETITION?**

Most petitioners begin the process of obtaining a restraining order by first asking for a temporary restraining order. Regardless of whether a temporary restraining order (TRO) petition or a petition for an injunction is filed, the petition form will request certain information. The petition asks for the petitioner's name and the name and address of the respondent. The respondent's address is requested because the TRO must be served on the respondent in order for an injunction hearing to be held. (See Part Three, Section II.) However, the law states that the petition and the court order in a domestic abuse and harassment injunction shall not disclose the address of the victim.

The petition asks the petitioner to state the specific facts that have led her to ask for an order of protection. It is important to state as many specific incidents of abuse or harassment as possible. In some counties, the court will only allow the petitioner to speak

about those incidents of abuse or harassment that are listed on the petition.

If petitioning for a **domestic abuse temporary restraining order**, a petitioner must show that she is in imminent danger of harm in order for a court to grant a TRO. This means that she believes she will be seriously hurt in the very near future. Some petitioners choose to file a harassment restraining order if they are not certain whether they are in imminent danger of harm. Another option for a petitioner who is not certain whether she can show imminent danger of harm is to bypass the **domestic abuse** TRO process and ask to have a date set for an injunction hearing. By law, imminent danger of harm need only be shown to obtain a domestic abuse **TRO**, not to obtain a domestic abuse **injunction**.

When petitioning for a domestic abuse temporary restraining order, it is helpful for the petitioner to state the incident(s) that occurred, that the incident(s) led her to fear for her safety, that she felt pain and that she did not consent to the incident(s). This assists the court to determine whether there is imminent danger of harm.

If petitioning for a harassment restraining order, the petitioner needs to specify each kind of harassing behavior that the respondent has done. By case law, the court can only order the respondent to discontinue doing the types of behavior that she says have occurred or those that are substantially similar. It is helpful for the petitioner to list all types of harassing behavior in order to have any and all of them stopped.

At the time the petitioner completes a harassment petition, she must also request that the respondent pay the fees, if she wishes the respondent to do so. On the petition form, there is a box that the petitioner can check requesting the court to order the respondent to pay such fees. She can also ask the court at the time of the hearing if she wishes to have the court order the respondent to pay the costs of the action, which are the cost to file the petition and to have it served on the respondent. The court will consider this request at the time of the injunction hearing - not at the time the TRO is issued. (See Part Five for information regarding costs including when there is no cost to file a harassment restraining order.)

**NOTE:** There are no longer fees when filing a domestic abuse, child abuse or individual at risk restraining order and no fees for harassment orders if certain behavior is alleged.

In a domestic abuse restraining order, the petitioner can request assistance from the sheriff's department to have the respondent removed from the home, if the petitioner and the respondent live together. At the temporary restraining order hearing, the petitioner can request assistance from the sheriff's department or other law enforcement agency to help her return to her home and remove the respondent from the home by serving him with the TRO. These requests are made by checking the box(es) on the petition.

There are no provisions in the harassment restraining order statute for removal of the respondent from the home because it is presumed that if the petitioner and respondent lived together, the petitioner will file for a domestic abuse rather than a harassment restraining order. Wisconsin's law on harassment restraining orders was written to protect

those persons who are being harassed or harmed by someone with whom they are not in an intimate relationship.

## **PART FIVE: QUESTIONS ABOUT THE FEES FOR A RESTRAINING ORDER**

### **Section One: There are no fees for filing a domestic abuse, child abuse or individual at risk restraining order.**

Under §§ [814.61\(1\)\(d\)](#) and [\(e\)](#) and [814.70](#), no fees may be collected to file a domestic abuse, child abuse or individual at risk restraining order, to serve the petition or for the cost of travel to serve the petition. However, fees for the cost of filing a petition, service of the petition and travel to serve the petition may be collected from the respondent upon conviction of violation of the order. Fees are required for a harassment restraining order unless the petition alleges that the respondent committed certain acts, including intentional infliction of personal injury to the petitioner (under [§813.12\(1\)\(am\)1 to 6](#)), sexual assault (under [§940.225](#)), or stalking (under [§940.32](#)).

NOTE: If the petitioner chooses to either hire a private process server or have the petition served by publication or facsimile, the petitioner is responsible for these costs.

### **Section Two: There are three fees to petition for a harassment restraining order, unless certain behavior is alleged.**

There are three fees involved when petitioning for a restraining order. The first fee, called a civil law filing fee, is an amount paid by any person who files any civil law action. Because a restraining order is a civil law action, the petitioner will be required to pay the amount set by law under [§814.61\(1\)](#). As of November 2010, this amount is \$75.00. In addition, anyone who files a civil case must pay a \$21.50 justice information system fee under [§814.86\(1\)](#). A \$68.00 fee must be paid to the court when filing a civil case for court support services fee under [§814.85\(1\)\(a\)](#). This means the total cost for filing a harassment restraining order as of November 2010 is \$164.50.

In addition, the second and third fees are for the costs to the sheriff for service and travel, as set by §§ [814.70\(1\)](#) and [\(3\)](#). The cost is currently \$12 (these fees vary in each county) for each attempt at service. The fee for travel depends on the size of the county.

The petition is served either by the sheriff's department or other local law enforcement agency, which is responsible for keeping the restraining Orders on file. Usually a county will charge a minimum fee that includes three efforts to serve the petition. For example, a county might charge the petitioner \$36.00 up-front in order to allow the law enforcement agency to attempt to serve the petition on the respondent at least three times. The practice of refunding money if the respondent is found on the first try varies from county to county. In addition, counties can require additional money for the cost of mileage, although some counties do not charge for mileage.

A petitioner does not have to pay any fees until the TRO petition is granted. If the court does not grant the TRO, the petitioner does not have to pay a filing fee. If the court grants the TRO, the petitioner must then pay the cost of filing the petition in order to get the court

date set for the injunction hearing. In some counties, the petitioner is allowed to file the TRO to get the date set for the injunction hearing without paying any fees until the time of the injunction hearing. This practice varies from county to county. In most counties, the petitioner pays these fees in the clerk of courts office, which handles civil cases. Some counties will not accept personal checks as payment for filing a restraining order. It is safest for the petitioner to plan to pay with cash, a cashier's check or a money order.

The practice of collecting fees for serving the restraining order on the respondent also varies in each county. In some counties, the petitioner gives this money to the clerk of courts who forwards it on to the sheriff's department. In other counties, the petitioner must file the TRO with the clerk of courts office, take the TRO (which now contains the date of the injunction hearing) to the sheriff's office and pay the sheriff's office the fee for serving the petition. Some counties will try to serve the petition and will then send a bill to the petitioner for the costs of the service when they know how many attempts they have made and their fees for mileage.

**Section Three: Petitioner will not have to pay fees to file a harassment restraining order if the petition alleges conduct that is prohibited by §940.32 (stalking) or any of the prohibited behavior listed in §813.12 (domestic violence restraining orders).**

Section [940.32](#) prohibits stalking behaviors. It criminalizes intentional behavior that would cause a reasonable person under the same circumstances to suffer serious emotional distress or fear bodily harm or death for him/herself, family or household members and is a series of two or more acts carried out over time.

Section [813.12](#) prohibits domestic violence. Domestic Violence includes: 1. Intentional infliction of physical pain, physical injury or illness; 2. Intentional impairment of physical condition; 3. A violation of 1st, 2nd, or 3rd degree sexual assault under §§ [940.225 \(1\), \(2\) or \(3\)](#); 4. Damage to the property of that person; and 5. A threat to engage in any of the conduct above in 1,2,3, or 4. If any of these behaviors are in the stated harassment petition, the court is to mark on the form entitled "Notice of Hearing" that no fee is required.

**Section Four: Petitioner can request not to pay fees because the petitioner has no money.**

Each county also has a procedure to allow a person who is very poor to file a legal document stating that she is unable to pay for the cost of filing a restraining order. There is a standard form that is used in all circuit courts in Wisconsin (Form CV-410). This legal document is called an affidavit of indigency. Each county has these forms available in the office of the circuit court commissioner or judge who holds the TRO hearing or in the clerk of courts office. The affidavit of indigency should be given to the circuit court commissioner or judge at the time the court considers whether to grant the TRO petition to allow the court to decide whether to waive (which means to set aside) the fees. When the court considers an affidavit of indigency, it considers the petitioner's assets (meaning income or savings), but not the petitioner's debts (meaning money which is owed or liabilities.)

In some counties, the court will temporarily waive the costs to give the petitioner more time to get funds. In some counties, the court will grant a waiver of fees for either the cost

of the filing fees or the cost of serving the petition on the respondent, but not both. In other counties, both the filing fees and cost of serving the petition on the respondent will be waived.

**Section Five: Requesting that the respondent pay the fees.**

The petitioner may ask the court to order the respondent to pay the cost of the filing fees and cost of the service fees. Although the request that the respondent pay the fees is made on the TRO petition, the decision whether to order the respondent to pay will not be made by the court until the injunction hearing. This means that in most counties the petitioner must pay the costs of the filing fees and the cost for service before the injunction hearing will be held.

Before the petitioner decides whether to request that the respondent be ordered to pay the costs of the hearing, the petitioner may want to consider two things: first, it appears that some respondents do not bother to attend the injunction hearing unless the petitioner has requested that the respondent pay the fees. The respondent might then attend the hearing just to request the court not to order him to pay the fees.

Second, even if the court orders the respondent to pay the fees, the petitioner may need to file yet another civil law suit in order to get the order enforced if the respondent does not pay up. This means that the petitioner will have to pay more fees up-front in order to have another court date set in small claims court or to seek a legal order called a judgment. This is a lengthy process, which takes time and can be expensive. The petitioner should check on the procedures in her county, because the ease (or difficulty) of obtaining a small claims action or a judgment varies per county.

If the petitioner has an attorney, the attorney may be able to assist with the collection of the money from the respondent. This assistance will probably also cost money.

**Section Six: There is no return of fees if the hearing is not held.**

A petitioner must be at the injunction hearing in order for the court to grant a restraining order. Also, under Wisconsin law, the respondent must be served before the court can conduct an injunction hearing. This *does not* mean that the respondent must be present at the hearing, only that the respondent must be served with the petition.

If the respondent cannot be located, the petitioner can ask for a one-time two-week extension of the TRO in a harassment restraining order and a one-time two-week extension in a domestic abuse restraining order. If the extension is granted, the TRO remains in effect for two more weeks and the date of the injunction hearing is delayed for up to two weeks in order to try to locate the respondent.

If the respondent still cannot be located by the end of the extension of the TRO, no injunction hearing can be held. In such a case, the petitioner does not get her money back. In fact, if the petitioner wants to try to continue to get a harassment restraining order, she will have to start the process over again and pay the fees again.

However, if the petitioner is requesting a domestic abuse restraining order, she can ask

for a one-time two-week extension. If service is still not possible during this time, the petitioner can provide service by publication or facsimile of either the petition or a summary of the petition. This means the petitioner will have the petition placed in a newspaper or publication in the location in which it is expected the respondent resides or send a facsimile to a known facsimile number of the respondent. The petitioner is responsible for the costs of this service.

NOTE: It is possible to have the parties agree to extend a TRO beyond the 7 or 14 days. A TRO is in effect until the date of the injunction hearing

## **PART SIX: DOES THE PETITIONER NEED ASSISTANCE TO GO TO COURT TO GET A RESTRAINING ORDER?**

Wisconsin law is written to allow a petitioner to file a petition without having to hire an attorney. However, either the petitioner or the respondent, or both, may hire an attorney to represent her or him. Some petitioners feel more comfortable having the assistance of an attorney. If a party has an attorney, the attorney will guide the party through the TRO and injunction process.

It is probably a good idea for the petitioner to have someone assist her when she goes to court - particularly to the injunction hearing. Wisconsin law says that any person in a legal proceeding that deals with domestic abuse may have a service representative attend the proceeding with her or him. A service representative is a person whose job is to assist with legal proceedings provided the legal representative does not get paid any fees by the petitioner or the respondent. Victim/witness specialists and coordinators, family violence specialists, or advocates who work with a domestic abuse or sexual assault program or shelter are all people who are considered a service representative under the law.

By law, a petitioner has the right to have a service representative accompany her to the hearing. See [§895.45](#), Wis. Stats. The service representative may sit with the petitioner and talk to her during the proceeding. While the service representative cannot represent the petitioner or speak on her behalf, the service representative may address the court if permitted to do so.

It is often helpful for the petitioner to have a person sit with her during the injunction hearing because this service representative or attorney can help explain the terms being used by the court and can explain what is going on during the proceeding. This person can help guide the petitioner through the hearing and can offer emotional support.

It is also helpful for the petitioner to have a service representative serve as a support person for her during the injunction hearing because it is probably the first time that she will see the respondent since she filed the TRO. It is often an emotionally difficult time for the petitioner. The presence of a support person can help to relieve some of her stress. The support person can also act as a buffer between the petitioner and the respondent by physically sitting between the two parties or positioning him or herself such that the

respondent is unable to make eye contact with the petitioner.

## **PART SEVEN: WHAT CAN A COURT ORDER IF A RESTRAINING ORDER IS GRANTED?**

### ***Section One: Domestic Abuse Restraining Orders***

By law, the judge or family circuit court commissioner can order any of the following in a domestic abuse restraining order TRO or injunction:

1. Order the respondent to avoid the petitioner's residence (known as a no-contact order);
2. Order the respondent to avoid any premises temporarily occupied by the petitioner;
3. Order the respondent to avoid contacting or causing any person other than a party's attorney or a law enforcement officer to contact the petitioner unless the petitioner consents in writing;
4. Order the respondent to refrain from acts of domestic abuse (known as a no-hit order);
5. Allow the petitioner to retrieve a household pet or order the respondent to refrain from removing, harming, mistreating, or disposing of the household pet;
6. Allow the petitioner out of a family wireless phone service contract;
7. Any combination of these remedies; or
8. Any remedy not inconsistent with those requested in the petition.

By law, if the court grants the domestic abuse restraining order, the court must grant the remedies requested by the petitioner. The petitioner requests the remedies she wants by checking the appropriate boxes on the petition for the TRO or injunction. Some petitioners ask for a no-contact order because they do not want the respondent anywhere near them. Other petitioners request a no-hit order because they wish to live with or have contact with the respondent but they do not wish to be hurt. This may be true for a petitioner who owns a business with the respondent (such as a farm) or for a petitioner who is dependent on the respondent for day care responsibilities.

It is also possible for a petitioner in a domestic abuse petition to request a combination of remedies. A petitioner might choose to have a no-hit order allowing the respondent to live with her and a no-contact order at her place of employment or any other location so the respondent cannot come there or call her there.

The domestic abuse restraining order law also says that the petitioner may request that the court order the sheriff to accompany the petitioner and place her in possession of her

home if the respondent is occupying the home. If the petitioner and respondent are not married and the respondent owns the home in which they are living, the law states that the court may order the respondent to avoid the premises for a reasonable length of time until the petitioner relocates. Once the petitioner relocates, the respondent must avoid the new residence.

It is also possible for either party at a domestic abuse restraining order injunction hearing to request the court to make other orders. It is up to the court whether it will grant these requests.

If the petition for a domestic abuser restraining order is granted, the court by law must grant the petition for the length of time requested by the petitioner for up to four years. If a court orders a restraining order for less than four years, by law the petitioner can state that an extension is necessary to protect her and the court must extend the injunction so it remains in effect until four years after the date the court first entered the injunction. By law, notice need not be given to the respondent before extending the injunction.

Please note: if a domestic abuse restraining order is granted, the injunction **MUST** order the respondent to surrender any firearms in his possession or which he owns and notify the respondent that he is not allowed to purchase or possess any firearms during the time the injunction is in effect. The petitioner does not have to request the court to make such an order because it is mandated by law. However, some courts are not including firearms surrender law in the order, so it may be necessary to remind the court of this obligation under [§813.12 \(4m\)](#).

### ***Section Two: Harassment Restraining Orders***

By law, a judge or circuit court commissioner may grant an injunction ordering the respondent to cease or avoid harassing another person. The court can also order that the respondent avoid the petitioner's residence or any other location temporarily occupied by the petitioner. The petitioner needs to specify each kind of harassing behavior in which the respondent has engaged. The court can only order the respondent to discontinue the types of behaviors that the petitioner says have occurred. It is helpful for the petitioner to list all types of harassing behavior in order to have any and all of them stopped.

In addition, by law the petitioner may ask the court to order the respondent to surrender any firearms in his possession and to be ordered not to purchase or possess any firearms while the injunction is in effect. Unlike a domestic abuse restraining order where such an order is mandated if the court grants the injunction, a petitioner must both make the request when requesting a harassment restraining order and must show that the respondent may use a firearm to cause physical harm to another or to endanger public safety. See [§813.125\(4m\)](#).

### ***Section Three: Child Abuse Restraining Orders***

Please note: if a child abuse restraining order is granted, the injunction **MUST** order the respondent to surrender any firearms in his possession or which he owns and notify the respondent that he is not allowed to purchase or possess any firearms during the time

the injunction is in effect. The petitioner does not have to request the court to make such an order because it is mandated by law. However, some courts are not including firearms surrender law in the order, so it may be necessary to remind the court of this obligation under [§813.122\(5m\)\(a\)](#).

#### ***Section Four: Individual at Risk Restraining Orders***

In addition, by law the petitioner may ask the court to order the respondent to surrender any firearms in his possession and to be ordered not to purchase or possess any firearms while the injunction is in effect. Unlike a domestic abuse restraining order where such an order is mandated if the court grants the injunction, a petitioner must both make the request when requesting an individual at risk restraining order and must show that the respondent may use a firearm to cause physical harm to another or to endanger public safety. See [§ 813125\(4m\)\(a\)](#).

### **PART EIGHT: WHAT HAPPENS IF THE RESPONDENT VIOLATES THE INJUNCTION?**

It is important to understand that the respondent cannot violate the TRO or the injunction until he is aware of the order. By law, the petitioner is responsible for serving a copy of the petition upon the respondent. This usually happens when the sheriff's department or other law enforcement agency which is responsible for keeping all the TROs and injunctions on file finds the respondent and serves him. It is also possible for a law officer to serve the respondent by giving him the petitioner's copy of the TRO or injunction if he shows up at her residence before the police have located him and served him with a copy.

If the respondent has contact with the petitioner before he has been served with the TRO or injunction, it is safest for the petitioner to call the police and ask them to come. The police may then serve her copy of the petition on the respondent if they do not have a copy of the order. If the police serve the respondent with the petitioner's copy, the police must call the law enforcement agency which handles the service of restraining orders and tell them what has occurred. Also, if the police serve the petitioner's copy of the order on the respondent, she needs to obtain another copy from the clerk of courts office, as it is a good idea for the petitioner to have a copy with her at all times.

Please note: The respondent is in violation of the domestic abuse injunction even if he did not show up at the injunction hearing and has not yet been served with the injunction because he already had notice by being served with the TRO. This is known as constructive knowledge.

The law states that a person who violates a domestic abuse TRO or an injunction has committed a crime and may be fined not more than \$1,000.00 or imprisoned for not more than nine months or both. A person who violates a harassment TRO or an injunction has committed a crime and may be fined not more than \$1,000.00 or imprisoned for not more than ninety days or both. The law also states that a law enforcement officer shall arrest and take a person into custody if the officer has probable cause to believe that the

respondent has violated the domestic abuse or harassment order.

Finally, the law officer can only arrest the respondent for violating the restraining order if the officer knows about the violation. It is important for the petitioner to contact the police any time the respondent violates the TRO or the injunction so that the police can determine whether they have probable cause to make an arrest. If the respondent has fled and there is no other evidence that the respondent has violated the restraining order, it may not be possible for an officer to make an arrest. It may be helpful if the petitioner lets others who live or work with her know about the TRO or the injunction so that others can call the police if they see the respondent approaching the petitioner's residence or place of business. It is helpful for the petitioner to keep a journal of all violations of the protective order.

## **PART NINE: WHERE CAN A PETITIONER GO FOR ASSISTANCE?**

Most Wisconsin counties have a domestic abuse program or outreach program in which someone from that program is able to give the petitioner restraining order petitions and forms and explain what the process is in that county. In most counties, an advocate from the domestic abuse program will accompany the petitioner to the TRO hearing and to the injunction hearing as a service representative. (See Part Six above.) In addition, most advocates with a domestic abuse program are familiar with the procedures that the petitioner might experience, such as the process for obtaining service by publication if the respondent has not been served.

In Wisconsin, most counties also have a victim/witness program that might assist a victim in obtaining a restraining order. However, a victim/witness person is not protected by confidentiality laws as are advocates in domestic abuse programs. In most large counties, the victim/witness program will refer the victim to a program that specializes in helping victims obtain a restraining order. Even if the victim/witness program cannot assist the petitioner, the victim/witness program can usually give the petitioner the forms needed and explain the basic procedures in that county.

If a county does not have a victim/witness program or a domestic abuse program, the petitioner should check with the clerk of courts office in that county and ask whether there is any other resource who can assist her. By law, those who work in the clerk of courts office cannot assist the petitioner in filling out the forms or in offering any advice. However, the clerk's office can provide petition forms.

In some counties, the social services department will assist a woman seeking a restraining order. In addition, social services may know of another individual who can assist. A petitioner might also want to check in the closest county which has a victim/witness assistance program or a domestic abuse program, because a person in the nearest victim/witness program or domestic abuse program may be able to tell the petitioner how the process is conducted in the county that has no victim/witness assistance program or domestic abuse program or might know who can assist her.

The Wisconsin Department of Justice, Office of Crime Victim Services, has a victim resource center that operates during daytime hours. This program can offer generic information as to how to obtain a restraining order. If a victim of domestic abuse resides in a county which has neither a domestic abuse program nor a victim/witness assistance program, the Victim Resource Center will attempt to assist a person wishing to obtain a restraining order by finding someone who can assist within that county. This same office has a statewide directory entitled Wisconsin Resource Directory for Crime Victims. This Resource Directory gives information as to programs in the state, which serve various victims of crime, including victims of domestic abuse.

The Wisconsin Victim Resource Center can intercede in criminal matters if requested to do so by the victim of a crime, for example, by inquiring why an arrest and/or a prosecution did not occur in a criminal matter. The telephone number for the Wisconsin Victim Resource Center is 1-800-446-6564 or 608-264-9497.

The state also has a unit within the Department of Health and Social Services, the Division of Children and Family Services, which deals with funding issues for domestic abuse programs. Their number is 608-267-3905. Personnel within this unit also staff the Wisconsin Governor's Council on Domestic Abuse.

The Department of Corrections has a Victim Advocate who can assist victims who are dealing with an incarcerated person through all phases of that individual's incarceration. That number is 1-800-947-5777 or 608-240-5888.

End Domestic Abuse Wisconsin may also be able to assist by providing referrals to domestic abuse programs. The website for End Domestic Abuse Wisconsin can be accessed [here](#). This [link](#) provides a list of domestic abuse programs in Wisconsin by region.

The End Domestic Abuse Wisconsin Legal Advocate Manual contains a [list/LINK TO SERVICES FOR VICTIMS OF CRIME IN WISCONSIN, Criminal Law E] of services available to crime victims and witnesses in Wisconsin. These services are also listed below.

### **Office of Crime Victim Services**

The Wisconsin Office of Crime Victim Services (OCVS) houses many resources and programs for crime victims, family and friends, and professionals in the victim service field. To learn more about OCVS and its services, click [here](#).

- **Local Crime Victim Resources:** to learn about which services are available to victims of crime in your area, visit the Department of Justice's [directory](#).
- **Victim Resource Center (VRC):** The VRC at the Office of Crime Victim Services is a team of individuals that works to help crime victims understand their rights. The VRC can provide services including: informal mediation to address potential victim rights violations, help to victims in resolving problems with the justice

system, information on victim rights in Wisconsin, referrals to resources for crime victims in need of additional services, victim Appellate Notification Services (VANS) alerting crime victims to the outcome of criminal appeals, and other services. To learn more about the VRC, click [here](#).

- **Crime Victims' Rights Board:** The Crime Victims' Rights Board at the Office of Crime Victim Services serves to review and investigate complaints made by crime victims regarding their rights as victims of crime (crime victim rights are listed in [Chapter 950](#) of the Wisconsin State Statutes). To learn more about the Crime Victims' Rights Board, click [here](#).
- **Safe at Home Address Confidentiality Program:** Safe at Home is a statewide address confidentiality program that provides victims of actual or threatened domestic abuse, child abuse, sexual abuse, stalking, and trafficking, or those who simply fear for their physical safety with a legal substitute address to be used for both public and private purposes. To learn more about Safe at Home and to find out if you are eligible for the program, click [here](#).

### **Victim-Witness Programs**

Victim-Witness Programs across the state of Wisconsin services to victims and witnesses of crime through ensuring the rights of victims as outlined in Chapter 950 of the Wisconsin State Statutes. For more information about Victim Witness Programs, click [here](#). The Department of Justice also provides a [directory](#) of Victim-Witness coordinators by county.

### **Crime Victim Compensation**

Victims of violent crime and family or household members of deceased victims may have significant out-of-pocket expenses through no fault of their own. Crime Victim Compensation (CVC) helps pay for unreimbursed eligible expenses that result from the crime. For more information on Crime Victim Compensation (available in English, Spanish, and Hmong), click [here](#).

### **Wisconsin SAFE Fund**

If a victim is sexually assaulted and receives a forensic medical exam, the Wisconsin SAFE fund can reimburse health care providers in cases when the victim does not want to report a crime to law enforcement, does not want to cooperate with law enforcement, or does not wish to submit the bill to their health insurance, or other available payer source. For more information on the Wisconsin SAFE program, click program, click [here](#).

### **Restitution for Crime Victims**

Restitution for crime victims is a constitutional and statutory right in Wisconsin. The purpose of restitution is to pay for actual expenses that the victim had to pay because the offender victimized the victim. For more information on Wisconsin's restitution program for crime victims, click [here](#).

## **Civil and Criminal Databases**

- **WI-Vine (Victim Information Notification Everyday):** Wisconsin's VINE program is a free, anonymous telephone and online service that provides the public with information and notifications about the status of offenders in WI's county jails. For additional information and/or to register for VINE, click [here](#). VINE is available in English, Spanish, and Hmong.
- **WI- VPO (VINE Protective Order):** Wisconsin VPO is a service provided by the Office of Victim Services and Programs (OVSP) in partnership with local law enforcement agencies and Clerk of Courts' offices throughout the state. Petitioners may register to receive automated telephone or email notifications when a Temporary Restraining Order (TRO) has been served by law enforcement. For more information and/or to register for VPO, click [here](#).
- **WI- VOICE:** Wisconsin VOICE is a free telephone and online service for enrolled victims, survivors, and witnesses of crime that provides information and notifications about individuals under the custody or supervision of the Department of Corrections, including: offenders incarcerated in the Wisconsin Prison System, offenders on supervision in the community, or individuals on Wisconsin's Sex Offender Registry. Wisconsin VOICE is also available to victims of offenders who are civilly committed to the custody or supervision of the Department of Health Services and have been found not guilty by reason of mental disease or defect or have been committed under Chapter 980 (sexually violent person). For more information on Wisconsin VOICE, click [here](#).
- **WI- CCAP (Consolidated Court Automation Programs):** Wisconsin CCAP is a database which allows users to access to certain public records of Wisconsin circuit courts. CCAP does not contain closed records and only contains records that are open and otherwise accessible by law to an individual. To access Wisconsin CCAP, click [here](#).
- **WI- TIME (Transaction Information for the Management of Enforcement System):** Wisconsin TIME is a computer information system for criminal justice personnel in Wisconsin. It connects Wisconsin criminal justice computers to criminal justice computers nationally and in Canada. TIME provides criminal justice employees with such information as: warrants; driver's license and vehicle registration information; criminal histories; protection orders; sex offender and corrections information; and missing persons. Law enforcement (LE) officers have access through computers in squad cars. When a person files for a WI TRO or injunction, the Clerk of Courts notifies the sheriff's department, which has 24 hours to enter the information into TIME and the national NCIC network. For more information about TIME, click [here](#).