

<p style="text-align: center;">RESTRAINING ORDER UPDATE</p> <p style="text-align: center;">2019 Civil Process Conference</p>	<p>Amber Peterson Legal Advisor Director of State Courts Office - Office of Court Operations</p>
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<p style="text-align: center;">OVERVIEW OF PRESENTATION</p>
<ul style="list-style-type: none">■ Restraining order basics ■ Firearm surrender ■ Transmitting TROs/injunctions from clerks office to sheriff's department ■ Modifications to TRO and injunction forms ■ Third-party bidder affidavits in foreclosure sales

OVERVIEW OF WISCONSIN'S RESTRAINING ORDERS

OVERVIEW OF RESTRAINING ORDER LAW

- **Wisconsin has four types of restraining orders:**
 - **Domestic Abuse [Wis. Stat. 813.12]**
 - **Child Abuse [Wis. Stat. 813.122]**
 - **Individual at Risk [Wis. Stat. 813.123]**
 - **Harassment [Wis. Stat. 813.125]**

IMPORTANT DEFINITIONS	
Petitioner	Respondent
<ul style="list-style-type: none"> • Person seeking protection against harm • Files paperwork asking the court to issue a TRO/injunction 	<ul style="list-style-type: none"> • Person against whom protection is being sought • Petitioner is asking the court to order the respondent to stop behaving in a certain way • Respondent is served with the TRO/injunction

TRO VS. INJUNCTION	
Temporary Restraining Order (TRO)	Injunction
<ul style="list-style-type: none"> • Granted <i>ex parte</i> and without a hearing • Valid for 14 days, unless extended by the court • Firearms surrender requirements <u>do not</u> apply 	<ul style="list-style-type: none"> • Granted after full due process hearing • Generally valid for 2-4 years, but can be extended up to 5-10 years • Firearm surrender requirements <u>do</u> apply <ul style="list-style-type: none"> • Even if respondent does not appear at the injunction hearing

BEST PRACTICE TIP

Avoid telling victims they can “go to the clerks office/court house and get a restraining order.”

Be clear with victims that getting a restraining order is a process.

Suggested terms/phrases to use with victims:

- You can consider filing a petition for a restraining order with the court.
- You can go to the clerks office and ask about the process/get the paperwork to file for a restraining order.
- You can ask the court to grant you a restraining order, but there has to be a hearing first.

FILING FEE

Domestic Abuse, Child Abuse, Individual at Risk

- **No** filing fee to commence action

Harassment

- Maybe a filing fee, depending on the situation
- If petitioner alleges conduct that is the same or similar to domestic abuse, no filing fee – it is waived
- Judge or court commissioner makes this determination based on the filing

IMPORTANT RESTRAINING ORDER TIMELINES

Time between TRO and injunction hearing	
14 days	
General length of injunction	
2-10 years	
Time between injunction hearing and firearm surrender hearing	
1 week	
How long respondent has to surrender firearms	
48 hours	

FIREARMS PROHIBITIONS

<h3 style="text-align: center;"><u>Mandatory</u> Firearms Restriction</h3> <ul style="list-style-type: none"> • Domestic Abuse • Child Abuse <p style="margin-top: 10px;">“An injunction ... shall ... require the respondent to surrender any firearms that he or she owns or has in his or her possession...”</p> <p style="font-size: small; margin-top: 10px;">[§ 813.12(4m)(a)2. and § 813.122(5m)(a)2.]</p>	<h3 style="text-align: center;"><u>Optional</u> Firearms Restriction</h3> <ul style="list-style-type: none"> • Individual at Risk • Harassment <p style="margin-top: 10px;">If the court determines “... the respondent may use a firearm to cause physical harm to another or to endanger public safety,” the court <u>may</u> prohibit the respondent from possessing a firearm.</p> <p style="font-size: small; margin-top: 10px;">[§ 813.123(5m)(a) and § 813.125(4m)(a)]</p>
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CRIMINAL PENALTY FOR POSSESSION OF FIREARMS

- **Penalty: Class G felony** (up to \$25,000 fine and/or up to 10 years in prison) [Wis. Stat. 941.29(2)(d) and (e)]
- **A person is prohibited from possessing a firearm if s/he is “enjoined under an injunction issued under s. 813.12 or 813.122 or under a tribal injunction ... or ordered not to possess a firearm under s. 813.123(5m) or 813.125(4m).”** [Wis. Stat. 941.29(1)(f) and (g)]

FIREARM SURRENDER

FIREARMS SURRENDER LAW

- Firearm surrender law became effective
11/1/2014 [2013 WI Act 321]
- Created Wis. Stat. 813.1285
- Law requires court to hold follow-up hearing when:
 - Court issues domestic abuse, child abuse, individual at risk (w/ firearm restriction), or harassment injunction (w/ firearm restriction)
 - AND**
 - Court finds that the respondent possesses firearm(s)

FIREARM SURRENDER FORMS

- *Respondent's Statement of Possession of Firearms (CV-800)*
- *Petitioner's Statement of Respondent's Possession of Firearms (CV-801)*
- *Notice of Firearm Surrender Hearing (Respondent Not Present at Injunction Hearing) (CV-802)*
- *Order to Surrender Firearms and Notice of Firearm Surrender Hearing (CV-803)*
- *Information for Respondents Regarding the Surrender and Return of Firearms (CV-804)*
- Available on Wisconsin Court's website:
<https://www.wicourts.gov/forms1/circuit/index.htm>

KEY FEATURES OF SURRENDER LAW

▪ **Notifying Respondent of Process**

- Respondent is served with *Information for Respondents Regarding the Surrender and Return of Firearms (CV-804)*
- Establishes expectations for what will happen with regard to firearms

[Wis. Stat. 813.12(2)(c), 813.122(2)(b), 813.123(5)(a)2., 813.125(4)(a)2.]

KEY FEATURES OF SURRENDER LAW

▪ **Identifying Firearms Early**

- Respondent is required to complete *Respondent's Statement of Possession of Firearms (CV-800)*
- Petitioner can complete *Petitioner's Statement of Respondent's Possession of Firearms (CV-801)*
- Provides the court with more information about presence of firearms

[Wis. Stat. 813.1285(2)(a)]

KEY FEATURES OF SURRENDER LAW

■ Setting a Timeline for Surrender

- If court determines respondent possesses firearms, respondent is ordered to surrender firearms within 48 hours of the injunction hearing

- Surrender can be made to the sheriff or a third party or both (sheriff first, then third party)

- See *Order to Surrender Firearms and Notice of Firearm Surrender Hearing (CV-803)*

[Wis. Stat. 813.1285(1g)]

ORDER TO SURRENDER FIREARMS

Order to Surrender Firearms (CV-803):

- Orders respondent to appear for hearing
- Orders surrender method
- States how long respondent has to surrender

Served with the injunction

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY		
Petitioner: _____	<input type="checkbox"/> Amended	
-vs- Respondent: _____	Order to Surrender Firearms and Notice of Firearm Surrender Hearing	
Address: _____	Case No. _____	
THE COURT ORDERS:		
1. You must appear at a Firearm Surrender Hearing on: <i>(Hearing shall be held within one week of the injunction hearing.)</i>		
Date _____	Time _____	Location _____
Circuit Court Judge/Circuit Court Commissioner		
<p>Note: If you request firearm(s) surrender to a third party, both you and the third party must attend the Firearm Surrender Hearing.</p>		
2. The injunction granted on [Date] _____ is temporarily stayed until [Date and time, not to exceed 48 hours] _____ at [Time] _____ for purposes of firearm surrender. Any temporary restraining order remains in effect until the stay is lifted.		
<input type="checkbox"/> 3. A temporary restraining order was not previously granted. The court now grants a temporary restraining order prohibiting the respondent from the following conduct: (See CV-403, CV-406, CV-413, CV-429, or JC-1691 forms for prohibited conduct.) _____		
4. Failure to appear at the hearing may result in the court issuing a warrant for your arrest.		
5. You have until [Date and time as listed in #2, not to exceed 48 hours] _____ at [Time] _____ to surrender ALL firearms you own or possess to		
<input type="checkbox"/> the sheriff of this county, <input type="checkbox"/> the sheriff of the county in which the respondent resides: _____ <input type="checkbox"/> another person. (Name and Address) _____ <input type="checkbox"/> the sheriff of _____ County. If you wish to surrender to a third party, you and the third party must appear at the Firearms Surrender Hearing scheduled above. If the court approves the third party, the third party may obtain the firearm(s) directly from the sheriff.		

KEY FEATURES OF SURRENDER LAW

▪ **Follow-Up Surrender Hearing**

- If firearms are ordered surrendered, the court schedules a hearing within one week of the injunction hearing

- At follow-up hearing, the court determines whether the respondent complied with the court's surrender order
 - Compliance = surrender to third party or to sheriff

[Wis. Stat. 813.1285(2)(c)2., 813.1285(4)(b)]

COMMON SERVICE QUESTIONS

- What if the respondent wasn't at the injunction hearing and can't be found for service?
 - If the respondent was served with the TRO, the respondent has constructive knowledge of the existence of the injunction and shall be arrested for violation of the injunction regardless of whether s/he had been served with a copy of the injunction. [Wis. Stat. 813.12(7)(c)]

COMMON SERVICE QUESTIONS (CONT.)

- What if there was a firearm surrender hearing scheduled and the respondent can't be served with the injunction or notice of hearing?
 - The statutes don't specifically address this issue
 - Some counties will issue an arrest warrant
 - If the respondent fails to appear at the firearm surrender hearing, the court shall issue an arrest warrant [Wis. Stat. 813.1285(4)(a)]
 - Regardless, the respondent can be arrested for violating the injunction

RETURN OF FIREARMS

- To get surrendered firearms back, respondent must file *Petition to Return Firearm(s) (CV-433)*
- Court must determine
 - If injunction has been vacated or expired, and
 - Whether respondent is prohibited from possessing firearms under any state or federal law
 - Use *Order to Sheriff for Firearms Record Check/Response of Sheriff (CV-434)*
- Court completes *Order Concerning Return of Firearms (CV-435)*

RETURN OF FIREARMS (CONT.)

Injunction Firearms

- Firearms surrendered pursuant to injunction
- Returned using *Petition to Return Firearm(s)* (CV-433)
- § 813.1285(5) and (7)

Evidence Firearms

- Firearms confiscated for criminal investigation
- Returned using *Order to Return Firearms Under § 968.20(1m)* (CR-225)
- § 968.20(1m)(d)1.

HOW LAW ENFORCEMENT AND COURTS CAN WORK TOGETHER

- Develop uniform surrender receipt from sheriff
- Develop protocol for firearm surrender and pick up
- Allow all firearms to be surrendered to sheriff, even if resp. wants to do third party surrender
- Serving deputies can ask about firearms when TRO is served

**SENDING
TROS/INJUNCTIONS
FROM COURT TO
SHERIFF**

**GENERAL RULE FOR TRANSMITTAL
OF TROs AND INJUNCTIONS**

- Once a TRO or injunction is granted, the clerk of court shall forward it to the sheriff and “the sheriff shall assist the petitioner in executing or serving” the order [Wis. Stat. 813.12(6)(ag)1., etc.]
- Effective June 1, 2016
- The petitioner may elect to use a private process server, but cannot be required to obtain one
- Applies to all four restraining order types

SENDING PAPERWORK FROM CLERKS OFFICE TO SHERIFF'S DEPARTMENT

- Historically, clerks were asked to fax or hand-deliver TRO/injunctions forms to sheriff due to a Director of State Courts Office (DSCO) policy against use of email

- **EXCITING UPDATE!**
 - Effective February 5, 2019, DSCO revised policy to allow clerks to send TRO/injunction forms to sheriff via email

 - A memo was sent to all clerks of circuit court

 - We discussed this at their annual spring conference

TIPS FOR USING EMAIL

- Suggested best practices provided to clerks for sending documents via email to the sheriff's department:
 - Be sure to have a valid email address

 - If possible, use an email address for the sheriff's department that is monitored by multiple people

 - Be sure email address is secure to protect sensitive and confidential information

TRANSMITTAL OF TROs AND INJUNCTIONS (CONT.)

- Does your county require the petitioner to complete an information form on the respondent?

- If yes:
 - Make sure the clerk has copies of the form
 - Educate clerk staff on any common questions that arise
 - Establish a contact person in sheriff's department and clerk's office?
 - Will clerk keep a copy for the file? (If yes, it is confidential.)

SAMPLE INFORMATION FORM WINNEBAGO COUNTY

Includes:

- Restraining order type
- Harassment fee waiver?
- Requesting sheriff service?
- Requesting to remove respondent from home?
- Name, address, phone, sex, race, DOB
- Best time to serve
- Employer name, hours of work
- Vehicle description
- Description of daily routine
- Petitioner contact information

WINNEBAGO COUNTY SHERIFF'S OFFICE REQUEST FOR PAPER SERVICE

Is this RESTRAINING ORDER for: HARASSMENT OR DOMESTIC ABUSE
 If HARASSMENT, were you issued a fee waiver (a copy must be included)? YES NO

Are you requesting that the Sheriff Dept serve this RESTRAINING ORDER? YES NO

Are you requesting that the Sheriff Dept REMOVE the respondent from your residence, ONLY IF THE COURT HAS ORDERED REMOVAL? YES NO

WHO IS BEING SERVED:
 NAME OF PERSON TO BE SERVED: _____
 ADDRESS: _____ APT. # _____
 CITY, STATE, ZIP CODE: _____
 HOME PHONE # _____ CELL PHONE # _____
 SEX: _____ RACE: _____ DATE OF BIRTH: ____/____/____
 BEST TIME TO SERVE: _____
 EMPLOYER NAME: _____ ADDRESS: _____
 EMPLOYER PHONE # _____ HOURS OF WORK: _____
 TYPE OF VEHICLE: _____ VEHICLE COLOR/PLATES: _____
 ADDITIONAL INFORMATION FOR DEPUTY (DAILY ROUTINE...): _____

WHO IS REQUESTING THE SERVICE:
 PERSON REQUESTING SERVICE: _____
 ADDRESS: _____
 CITY: _____ STATE: _____ ZIP CODE: _____
 PHONE: _____

IF THIS IS A HARASSMENT TRO OR INJUNCTION, AND THE FILING FEE HAS NOT BEEN WAIVED, THERE WILL BE A \$75 CHARGE FOR SERVICE THROUGH THE SHERIFF DEPARTMENT.

SIGNATURE _____ DATE _____

**If you have questions, specific to the service of the TRO/Injunction please call Civil Process at 920-236-7303

SERVICE FEE

- No service fee for domestic abuse, child abuse, or individual at risk TROs/injunctions
- No service fee for harassment TROs/injunctions if petitioner alleges conduct that is the same or similar to domestic abuse [Wis. Stat. 814.70(1)]
- If a service fee is required for harassment cases, the petitioner must pay the sheriff directly - not through the clerk [Wis. Stat. 813.125(5g)(cm)2.]

MODIFICATION TO TRO AND INJUNCTION FORMS

MODIFICATION TO TRO AND INJUNCTION FORMS

- Effective September 1, 2018, all court orders are required to have a 3-inch space at top of the page
- Judges/commissioners insert their electronic signature into that space
- Substantive content of all forms remains the same

TRO FORM

BY THE COURT:

Circuit Court Judge Circuit Court Commissioner

Print or Type Name _____

Date _____

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

Amended

**Temporary Restraining Order
(Temporary Order of Protection)
and Notice of Injunction Hearing
(Domestic Abuse - 30709)**

Case No. _____

PETITIONER

Name of Petitioner (First, Middle, Last) _____

Date of Birth of Petitioner _____

-VS-

RESPONDENT/DEFENDANT

Name of Respondent/Defendant (First, Middle, Last) _____

Respondent's/Defendant's Street Address, City, State, Zip _____

SEX	RACE	DOB	HT	WT
HAIR COLOR		EYE COLOR		

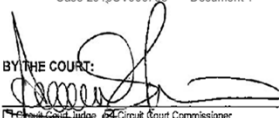
Please specify Petitioner's relationship(s) to Respondent/Defendant:

spouse cousin adoptive parent
 former spouse sibling grandparent
 person in dating relationship parent child (biological/adoptive/step)
 current or former live-in relationship step parent
 Other: (Be specific) _____

CAUTION: Respondent/Defendant has access to weapon(s). Type of weapon(s): _____
 (Check all that apply) Location of weapon(s): _____
 Weapon(s) were involved in an incident (past or present) involving the petitioner.

**SIGNED
TRO**

Case 2019CV000785 Document 1 Scanned 03-21-2019 Page 1 of 3

BY THE COURT:

 Circuit Court Judge Circuit Court Commissioner
 ANTON S. JAMISON
 Print or Type Name
 3/21/2019
 Date

FILED
 MAR 21 2019
 DANE COUNTY CIRCUIT COURT

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY
 Amended

**Temporary Restraining Order
 (Temporary Order of Protection)
 and Notice of Injunction Hearing
 (Domestic Abuse - 30709)**
 Case No. **19CV0785**

PETITIONER
 Name of Petitioner (First, Middle, Last) _____
 Date of Birth of Petitioner 12-03-1982

-VS-

INJUNCTION

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY
 Amended

**INJUNCTION – Domestic Abuse
 (Order of Protection - 30709)**
 Case No. _____

PETITIONER
 Name of Petitioner (First, Middle, Last) _____
 Date of Birth of Petitioner _____

-VS-

RESPONDENT/DEFENDANT
 Name of Respondent/Defendant (First, Middle, Last) _____
 Respondent's/Defendant's Street Address, City, State, Zip _____

SEX	RACE	DOB	HT	WT
HAIR COLOR		EYE COLOR		

Respondent's/Defendant's Distinguishing Features
 (Such as scars, marks or tattoos)
 None known.

Please specify Petitioner's relationship(s) to Respondent/Defendant:
 spouse cousin adoptive parent
 former spouse sibling grandparent
 person in dating relationship parent child (biological/adoptive/step)
 current or former live-in relationship step parent
 Other: (Be specific) _____

CAUTION: (Check all that apply)
 Respondent/Defendant has access to weapon(s). Type of weapon(s): _____
 Location of weapon(s): _____
 Weapon(s) were involved in an incident (past or present) involving the petitioner.

SIGNED INJUNCTION	Case 2019CV000785 Document 5 Filed 04-03-2019 Page 1 of 3	FILED 04-03-2019 CIRCUIT COURT DANE COUNTY, WI 2019CV000785
	BY THE COURT: DATE SIGNED: April 3, 2019 Electronically signed by Judge Valerie Bailey-Rihn Circuit Court Judge	
	STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY	
	<input type="checkbox"/> Amended	
	INJUNCTION - Domestic Abuse (Order of Protection - 30709)	
	Case No. 2019CV000785	
	PETITIONER	
	Name of Petitioner (First, Middle, Last) Myra Tameka Brooks	Date of Birth of Petitioner 12-03-1982
	-VS-	

THIRD-PARTY BIDDER AFFIDAVIT

THIRD-PARTY BIDDER LAW

- **2017 WI Act 339, effective 10/1/2018**
- **Establishes qualifications for 3rd-party bidders at foreclosure sales**
- **Requires 3rd-party bidders to complete an affidavit confirming they meet the requirements (CV-550) (posted on wicourts.gov under "forms" link)**

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY	
Plaintiff/Petitioner's Name -VS- Defendant/Respondent's Name	Eligible Third-Party Bidder Affidavit Case No. _____
UNDER OATH, I STATE:	
1. A bid at a sale of mortgaged premises is expected to be made in this foreclosure action by: Name: _____ Address: _____ Phone Number: _____	
2. I have signed this affidavit because: <ul style="list-style-type: none"> • I am the individual bidder; or • I am authorized to act on behalf of the entity that will submit the bid. 	
3. The bidder is not the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.	
4. The bidder is a "third-party bidder" because the individual/entity is not: <ul style="list-style-type: none"> • A party in this action; • An agent of a party in this action; or • An assignee of the plaintiff in this action. 	
5. The bidder: <ul style="list-style-type: none"> • Does not own an interest in Wisconsin property against which taxes have been levied that are more than 120 days delinquent; • Is not directly or indirectly owned, managed, or controlled, in whole or in part, by a person that owns an interest in Wisconsin property against which taxes have been levied that are more than 120 days delinquent; • Does not directly or indirectly own, manage, or control, in whole or in part, an entity that owns an interest in Wisconsin property against which taxes have been levied that are more than 120 days delinquent; • Has no unsatisfied judgment against it related to a state or local building code violation with respect to Wisconsin property; • Is not directly or indirectly owned, managed or controlled, in whole or in part, by a person against whom an unsatisfied judgment exists related to a state or local building code violation with respect to Wisconsin property; • Does not directly or indirectly own, manage, or control, in whole or in part, an entity against whom an unsatisfied judgment exists related to a state or local building code violation with respect to Wisconsin property; and • Is not submitting a bid on behalf of or as part of an agreement with a person that does not meet these qualifications. 	

THIRD-PARTY BIDDER LAW (CONT.)

- **Best Practice Recommendations**
 - **3rd-party bidder files form before the sale or brings a signed form to the sale**
 - **Statutes don't technically require affidavit until the sale occurs and the grantee wishes to confirm the sale**
 - **This allows sheriff/referee to confirm the 3rd-party bidder is a qualified bidder**
 - **Have a stack of affidavits (CV-505) available at the sale and a notary on site, if possible**

NEW REQUIREMENT FOR SHERIFF

- In any public place or on any Internet site where a notice of sale is posted, the sheriff or referee must also post the following:
 - An explanation regarding minimum bidder qualifications under Wis. Stat. 864.155(2) [third party bidder qualifications]
 - A statement that, before the sale may be confirmed, a purchaser that is not a party in the foreclosure action must submit an affidavit to the court affirming that the purchaser meets those minimum bidder qualifications [CV-505]

[Wis. Stat. 846.16(1)(d)]

CONTACT INFORMATION

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