



Restraining Order Issues

Atty. Kelsey Mullins

Legal Advisor & VAWA STOP Grant Manager
WI Director of State Courts Office
Office of Court Operations

2025 Civil Process
Server Conference

Roadmap

- I. TRO/injunction overview
- II. Length of injunctions
- III. Filing and service fees – *form updates*
- IV. Service of TROs and injunctions – *new FAQs*
- V. Confidentiality
- VI. Firearms prohibitions and surrender process
- VII. Safe at Home



TRO/injunction overview

PART I

Overview of restraining orders

Four types of restraining orders in Wisconsin

- Domestic Abuse (Wis. Stat. 813.12)
- Child Abuse (Wis. Stat. 813.122)
- Individual at Risk (Wis. Stat. 813.123)
- Harassment (Wis. Stat. 813.125)

Suggestions for speaking with victims

Avoid simply telling victims to “go to the clerks office/courthouse and get a restraining order”

Be clear getting a restraining order is a court process

Suggested phrases:

- “You can go to the clerks office/courthouse and ask about the process 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.”

What types of abuse must be alleged?

Domestic abuse - Wis. Stat. 813.12(1)(am)

- ▶ Intentional infliction of physical pain, injury, or illness
- ▶ Intentional impairment of physical condition
- ▶ 1st, 2nd, or 3rd degree sexual assault
- ▶ Stalking
- ▶ Intentional damage to physical property
- ▶ Threats to engage in any of the above

Harassment - Wis. Stat. 813.125(1)(am)4

- ▶ Striking, shoving, kicking, or other physical contact
- ▶ Engaging in a **course of conduct** or repeatedly committing acts which harass or intimidate and **serve no legitimate purpose**
- ▶ Child abuse
- ▶ 1st, 2nd, 3rd, or 4th degree sexual assault
- ▶ Stalking
- ▶ Or attempting or threatening to do the same

What types of abuse must be alleged? *Child abuse*

- ▶ Physical injury inflicted on a child by other than accidental means.
- ▶ Sexual intercourse or sexual contact under s. 940.225, 948.02, 948.025, or 948.085.
- ▶ Sexual exploitation of a child (violation of s. 948.05)
- ▶ Trafficking of a child (violation of s. 948.051)
- ▶ Prostitution: Permitting, allowing or encouraging a child to violate s. 944.30 (1m)
- ▶ Causing a child to view or listen to sexual activity (violation of s. 948.055)
- ▶ Exposing genitals, pubic area, or intimate parts (violation of s. 948.10)

What types of abuse must be alleged? *Child abuse, continued*

- ▶ Emotional damage for which the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to obtain the necessary treatment or to take steps to ameliorate the symptoms.
 - Note: Emotional damage can be brought ONLY against a **parent, guardian, or legal custodian**.
- ▶ Manufacturing methamphetamine in violation of s. 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.
 - Under any other circumstances in which a reasonable person should have known that the manufacture would be seen, smelled, or heard by a child.
- ▶ Threats to engage in any conduct above

What types of abuse must be alleged? *Individual at risk*

- ▶ Respondent interfered with or, based on conduct of the respondent, may interfere with:
 - an investigation of the elder adult at risk under s. 46.90 (5),
 - an investigation of the adult at risk under s. 55.043,
 - the delivery of protective services to or a protective placement of the individual at risk under ch. 55,
 - or the delivery of services to the elder adult at risk under s. 46.90 (5m);
- ▶ Or that the respondent engaged in, or threatened to engage in, the abuse, financial exploitation, neglect, stalking, or harassment of an individual at risk or mistreatment of an animal.
 - [Wis. Stat. 813.123(1) and Wis. Stat. 46.90(1)(a)]

Wis. Stat. 813.123(6)(c)

Four types of restraining orders

Domestic Abuse

Always involve adults

Wis. Stat.
813.12

Child Abuse

May involve adults and children

Wis. Stat.
813.122

Individual at Risk

Always involve adults

Wis. Stat.
813.123

Harassment

May involved adults and children

Wis. Stat.
813.125

Petitioner vs. Respondent

Petitioner

- Person seeking protection against harm
- Files paperwork asking the court to issue a TRO/injunction

Respondent

- 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

Who can petition for a restraining order?

Domestic abuse - Wis. Stat. 813.12(1)(am)

- ▶ Adult family member
- ▶ Adult household member
- ▶ Adult former spouse
- ▶ Adult with a child in common
- ▶ Adult in a dating relationship
- ▶ Adult under a caregiver's supervision
- ▶ Adult guardian of an incompetent individual

Harassment - Wis. Stat. 813.125(2)(b)

- ▶ Any person who has been harassed
- ▶ Child
- ▶ Parent, Step-parent, Legal guardian of child on behalf of a child
- ▶ In CHIPS cases:
 - GAL (*Wis. Stat. 48.235(4)(a)6.*)
 - Any party or governmental/social agency involved in the CHIPS proceeding (*Wis. Stat. 48.25(6)*)

Who can petition for a restraining order?

Child abuse - Wis. Stat. 813.122(2)(a)

- ▶ Child victim – under 18
- ▶ Parent of child victim
- ▶ Stepparent of child victim
- ▶ Legal guardian of child victim
- ▶ If CHIPS case:
 - Guardian ad Litem (GAL) - Wis. Stat. § 48.235(4)(a)6
 - Any party to or governmental or social agency involved in the proceeding – Wis. Stat. § 48.25(6)

Individual at risk - Wis. Stat. 813.123(2)(a)

- ▶ The individual at risk (“IAR”)
 - **Adult at risk:** Adult with a physical/mental condition that substantially impairs ability to care for self or who has experienced, is experiencing, or is at risk of experiencing neglect, self-neglect, or financial exploitation
 - **Elder adult at risk:** Age 60+ with the above risk
- ▶ Any person acting on behalf of an IAR
- ▶ Elder-adult-at-risk agency
- ▶ Adult-at-risk agency

Restraining orders: 2-step process

Step 1: Temporary Restraining Order (TRO)

- Granted *ex parte* and without a hearing
- Valid for 14 days, unless extended by the court
- Firearms surrender requirements do not apply

Step 2: Injunction

- Granted after full due process hearing
- Generally valid for 2-4 years, but can be extended up to 5-10 years
- Firearm surrender requirements do apply
 - Even if respondent does not appear at the injunction hearing

Length of injunctions

PART II

Important restraining order timelines

Time between TRO and injunction hearing

14 days

General length of injunction

2+ years

Time between injunction hearing and firearm surrender hearing

1 week

How long respondent has to surrender firearms

48 hours

Length of injunctions

Domestic Abuse (813.12(4)(c) and (d))

- “For the period of time the petitioner requests,” not more than **4 years**, except
- Up to **10 years** if the court finds a substantial risk of homicide or sexual assault

Child Abuse (813.122(5)(d) and (dm))

- Not more than **2 years** or until the child turns 18, whichever is first, except
- Up to **5 years** if the court finds a substantial risk of homicide or sexual assault

Individual at Risk (813.123(5)(c) and (d))

- Not more than **4 years**, except
- Up to **10 years** if the court finds a substantial risk of homicide or sexual assault

Harassment (813.125(4)(c) and (d))

- Not more than **4 years**, except
- Up to **10 years** if the court finds a substantial risk of homicide or sexual assault

Permanent injunctions for victims of sexual assault

2021 WI Act 256 – Effective April 17, 2022

- Upon request of the petitioner, court may order a permanent injunction if the respondent has been convicted of 1st, 2nd, or 3rd degree sexual assault against the petitioner
- Applies to all restraining order types

(Wis. Stats. § 813.12(4)(d)1m., 813.122(5)(d)1m., 813.123(5)(d)1m., 813.125(4)(d)1m.)

Modification of Injunction

- If the respondent's criminal conviction is vacated, respondent may file a motion requesting a review of the injunction
- Court shall hold the hearing within 30 days and determine if the conviction was vacated and modify or vacate the injunction (Wis. Stat. § 813.126(1m))

Changes to TRO petitions

I REQUEST THE COURT: [Mark any of the following boxes that apply]

- 1. Issue a Temporary Restraining Order requiring the respondent to
 - a. refrain from committing acts or threats of domestic abuse against the petitioner.
 - b. avoid the petitioner's residence and/or any location temporarily occupied by the petitioner.
 - c. avoid contacting the petitioner or causing any person other than a party's attorney or law enforcement officer to contact the petitioner. *Contact includes: contact at petitioner's home, work, school, public places, in person, by phone, in writing, by electronic communication or device, or in any other manner.*
 - d. refrain from removing, hiding, damaging, harming, or mistreating, or disposing of, a household pet.
 - e. allow the petitioner or a family member or household member of the petitioner acting on his/her behalf to retrieve a household pet.
 - f. Other: [List other specific behavior the petitioner wants the respondent to stop doing] _____

- 2. Set a time for a hearing on the Petition for an Injunction requiring the respondent to
 - a. refrain from committing acts or threats of domestic abuse against the petitioner.
 - b. avoid the petitioner's residence and/or any location temporarily occupied by the petitioner.
 - c. avoid contacting the petitioner or causing any other person than a party's attorney or law enforcement officer to contact the petitioner. *Contact includes: contact at petitioner home, work, school, public places, in person, by phone, in writing, by electronic communication or device, or in any other manner.*
 - d. refrain from removing, hiding, damaging, harming, or mistreating, or disposing of, a household pet.
 - e. allow the petitioner or a family member or household member of the petitioner acting on his/her behalf to retrieve a household pet.
 - f. Other: [List other specific behavior the petitioner wants the respondent to stop doing] _____

- 3. If the Temporary Restraining Order is denied, the petitioner asks the Court to schedule an Injunction hearing.

- 4. Issue an Injunction against the respondent for four years or the following shorter period: _____
 - Order the wireless telephone service provider to transfer to the petitioner each telephone number(s) he/she or a minor child in his/her custody uses. The provider will transfer to the petitioner all financial responsibility for and right to the use of any telephone number(s) transferred. **(See CV-437 form, Wireless Telephone Transfer Service in Injunction Case.)**

- 5. Order the Injunction, which is in effect for not more than 10 years, if the Court finds a substantial risk the respondent may commit 1st or 2nd degree intentional homicide, or 1st, 2nd or 3rd degree sexual assault against the petitioner.

- 6. Order the injunction is in effect permanently if the Court finds the respondent has been convicted of a violation of first, second, or third degree sexual assault against the petitioner.

- 7. Direct the sheriff to accompany the petitioner and assist in placing the petitioner in physical possession of his/her residence, if requested.

THIS INJUNCTION SHALL BE EFFECTIVE UNTIL

Not to exceed 4 years or 10 years under §813.12(4)(d), Wis. Stats.,
but may be permanent under §813.12(4)(d)1m., Wis. Stats.

THE COURT FINDS:

1. The petitioner or guardian on behalf of the petitioner filed a Petition alleging domestic abuse under §813.12, Wis. Stats.
2. This Court has personal and subject matter jurisdiction. The respondent has been properly served and had an opportunity to be heard.
3. There are reasonable grounds to believe that the respondent engaged in, or based upon prior conduct of the petitioner and the respondent, may engage in domestic abuse of the petitioner as defined in §813.12, Wis. Stats., as stated in the court record.
4. There is a substantial risk the respondent may commit 1st degree intentional homicide under §940.01, Wis. Stats., 2nd degree intentional homicide under §940.05, Wis. Stats., 1st, 2nd, or 3rd degree sexual assault under §940.225(1), (2) or (3), Wis. Stats., or 1st or 2nd degree sexual assault under §948.02(1) or (2), Wis. Stats., against the petitioner resulting in an Injunction Order for not more than 10 years.
5. The respondent was convicted of a violation of 1st degree sexual assault under §940.225(1), Wis. Stats., 2nd degree sexual assault under §940.225(2), Wis. Stats., or 3rd degree sexual assault under §940.225(3), Wis. Stats., in which the petitioner was the crime victim, resulting in a permanent injunction.
6. The respondent was present in Court and personally served with a copy of this Order.
7. The respondent was present in Court and personally served with a copy of the Order to Surrender Firearms and Notice of Firearm Surrender Hearing (CV-803) form.
8. The petitioner has requested the wireless telephone service provider transfer to the petitioner each telephone number(s) he/she or a minor child in his/her custody uses.

Changes to injunctions

Filing and service fees

PART III

Filing fee



Domestic Abuse, Child Abuse, Individual at Risk

- No filing fee to commence action

Harassment

- May be a fee, depending on the situation
- If petitioner alleges conduct that is the same or similar to domestic abuse, no filing fee – it is waived (Wis. Stat. 814.61(1)(e))
- Court makes determination based on the facts in the petition

Sheriff's service fee



Domestic Abuse, Child Abuse, Individual at Risk

- No service or travel fee to serve a TRO/injunction

Harassment

- May be a fee, depending on the situation
- If petitioner alleges conduct that is the same or similar to domestic abuse, no filing fee – it is waived (Wis. Stat. 814.70(1))
- Court makes determination based on the facts in the petition

Fee waived based on conduct

What to do if Filing Fee is Waived?

- Court: Check box no. 3a. on TRO
- Clerk: Enter FWBCA (Fee waiver based on conduct alleged) into CCAP
- FWBCA is **VERY IMPORTANT** – it prevents the petitioner's name from appearing on WCCA

Only the Court can change this Order.

THE COURT FINDS:

1. The petitioner or person on behalf of petitioner filed a petition alleging harassment under §813.125, Wis. Stats.
2. This Court has personal and subject matter jurisdiction.
3. There are reasonable grounds to believe that the respondent has engaged in harassment with intent to harass or intimidate the petitioner as defined in §813.125, Wis. Stats.
4. The Court orders a temporary restraining order and sets a date for an injunction hearing.

THE COURT ORDERS:

1. A hearing for an injunction be held on

Date	Time	Location
Circuit Court Judge/Circuit Court Commissioner		

2. Service of this Notice and Order shall be made at least _____ hours prior to the hearing.
3. The action may be commenced without payment of filing fees because:
 - a. the petition alleges conduct that is the same as or similar to conduct that is prohibited under §940.32, Wis. Stats.; or is intentional infliction of physical pain, physical injury or illness; or is an intentional impairment of physical condition; or is a §940.225(1), (2) or (3), Wis. Stats.; or is a violation of §943.01, Wis. Stats., involving property that belongs to the individual; or is a threat to engage in the above mentioned conduct.
 - b. the court finds the petitioner is indigent.
4. The respondent cease or avoid the harassment of the petitioner.

Fee waiver based on indigency

IMPORTANT NOTE – Fee Waiver Based on Indigency

- Look for box 3b on the TRO
- Even if harassment filing fee is not waived for conduct alleged, petitioner can still request fee waiver based on indigency using *Petition for Wavier of Fees and Costs (CV-410)*
- If fee is waived based on indigency, petitioner's name is not protected on WCCA

This form is also available in Spanish and Hmong.
<https://www.wicourts.gov/forms1/circuit/index.htm>
 Este formulario está disponible en español y hmong.
 Daim ntawv no muaj txhais ua lus Spanish thiab lus Hmoob.

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

Amended

-vs- **Petition for Waiver of Fees and Costs
Affidavit of Indigency**

Case No. _____

UNDER OATH, I STATE:

Because of poverty, I am unable to pay any filing and service fees, including the electronic filing fee, or _____, in this action, proceeding, or appeal, or to give security for those fees, and request waiver of those fees.

The documents I want to file are included with this Petition.

**Complete Section 1 if you receive aid from any of the programs listed.
If you do not receive aid, complete Section 2 only.**

Section 1.

I currently receive the following benefits and/or services:

Supplemental security income. Relief funded under §59.53(21), Wis. Stats. Medical assistance.
 Food stamps/FoodShare. Relief funded under public assistance.
 Benefits for veterans under §45.40 (1m) or 38 USC 501-562.
 Legal representation from the Public Defender's Office, civil legal services program or a volunteer attorney program based on indigency.

Name of program: _____

Other means-tested public assistance: _____

My financial situation has has not changed since I became eligible for this program.

If you checked the "has" box, and such changes would make you ineligible for the program(s) if you applied today, you must complete Section 2.

Section 2.

1. I am am not married.

2. I am am not employed. Name of employer: _____

3. I earn [Gross pay] \$ _____ weekly. every 2 weeks. twice monthly. monthly.
My take-home pay [after taxes and deductions] is \$ _____ per pay period.

4. I receive gross monthly income totaling the amount of \$ _____ from
 Pension Social security Unemployment compensation
 Disability Student loans/grants Other: _____

5. I have the following cash assets:
 Savings accounts: \$ _____ Cash: \$ _____
 Checking accounts: \$ _____ Money owed me: \$ _____

6. I have the following other assets:

CV-410A, 12/22 Petition for Waiver of Fees and Costs – Affidavit of Indigency §814.29, Wisconsin Statutes
This form shall not be modified. It may be supplemented with additional material.

Fee waiver based on indigency, *continued*

Only the Court can change this Order.

THE COURT FINDS:

1. The petitioner or person on behalf of petitioner filed a petition alleging harassment under §813.125, Wis. Stats.
2. This Court has personal and subject matter jurisdiction.
3. There are reasonable grounds to believe that the respondent has engaged in harassment with intent to harass or intimidate the petitioner as defined in §813.125, Wis. Stats.
4. The Court orders a temporary restraining order and sets a date for an injunction hearing.

THE COURT ORDERS:

1. A hearing for an injunction be held on

Date	Time	Location
Circuit Court Judge/Circuit Court Commissioner		

2. Service of this Notice and Order shall be made at least _____ hours prior to the hearing.
3. The action may be commenced without payment of filing fees because:
 - a. the petition alleges conduct that is the same as or similar to conduct that is prohibited under §940.32, Wis. Stats.; or is intentional infliction of physical pain, physical injury or illness; or is an intentional impairment of physical condition; or is a §940.225(1), (2) or (3), Wis. Stats.; or is a violation of §943.01, Wis. Stats., involving property that belongs to the individual; or is a threat to engage in the above mentioned conduct.
 - b. the court finds the petitioner is indigent.
4. The respondent cease or avoid the harassment of the petitioner.

Fee waiver based on indigency, *continued*

Question

- If box 3b is marked, indicating that the court finds the petitioner indigent, will your Department require a copy of the Order Waiving fees?

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

Amended

-VS-

Order on Petition for Waiver of Fees and Costs

Case No. _____

This form is available in Spanish and Hmong. <https://www.wicourts.gov/forms1/circuit/index.htm>
 Este formulario está disponible en español y hmong.
 Daim ntawv no muaj txhais ua lus Spanish thiab lus Hmoob.

THE COURT FINDS AND ORDERS:

Upon reviewing the petition of [Name] _____
 for waiver of fees and costs, this petition is

1. **GRANTED** because the court finds the requestor is currently indigent. The action may be commenced or defended without payment of filing fees, including the electronic filing fee. The sheriff shall serve all necessary documents without payment of service fees. The requestor may be required to pay these fees if the court later determines the requestor has the ability to pay.
2. **GRANTED** for waiver of _____. The requestor may be required to pay fees if the court later determines the requestor has the ability to pay.
3. **DENIED** because the court finds the requestor is not indigent, but is currently not able to pay filing or service fees. This action may be filed by the Clerk and all necessary documents may be served by the sheriff without prepayment of fees. Such fees must be paid no later than _____.
4. **DENIED** because the court finds
- requestor is not indigent. the allegation of poverty to be untrue.
 - requestor is a prisoner and is required to use form CV-438 or CV-440.
 - requestor has not stated a meritorious claim, defense, or appeal upon which the court may grant relief: [Brief explanation] _____
 - Other: _____

DISTRIBUTION:

1. Clerk of Circuit Court

Service of TROs and injunctions

PART IV

Service of TROs and injunctions



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- ▶ TRO or injunction is granted → clerk of court shall forward it to the sheriff
 - Clerks may email paperwork to sheriff (*See Informational Bulletin 19-02*)
- ▶ “The sheriff shall assist the petitioner in executing or serving” the order (Wis. Stat. 813.12(6)(ag)1., etc.] (effective June 1, 2016)
- ▶ Petitioner may use a private process server, but cannot be required to
- ▶ Applies to four restraining order types, including JI cases

Respondent's information (CV-420)

- ▶ Not necessary to maintain in court file – can just be sent to sheriff
- ▶ If it is kept in the court file, it is a confidential record
- ▶ Intended to assist with eFiled cases, but encouraged to be used in every case

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

-vs-

Respondent's Information for Service by Sheriff
Case No. _____

The information contained in this form will assist the sheriff's department in serving the respondent with any documents that require personal service, including the temporary restraining order and injunction. Although you may not know all of the requested information, filling out this form as completely and accurately as possible will help avoid unnecessary delays in service. **The information contained in this document is confidential and will not be shared with the respondent.**

If the temporary restraining order and/or injunction is granted, are you requesting that the **sheriff's department serve the documents on the respondent?** YES NO (You may hire a private process server at your own expense.)

RESPONDENT'S INFORMATION [PERSON WHO IS BEING SERVED]:

Name of respondent (First, Middle (full), Last): _____

Street Address: _____ APT. #: _____

City, State, Zip Code: _____ Alias/Nickname(s): _____

Home Phone Number: _____ Cell Phone Number: _____

Sex: _____ Race: _____ Height: _____ Weight: _____
Date of Birth: ____/____/____ (If unknown, approximate age: ____)

Hair Color: _____ Eye Color: _____ Languages Spoken (other than English): _____

Other Distinguishing Features (tattoos, scars, glasses, facial hair, etc.): _____

Best time to serve at home: _____

Best time to serve at work: _____

Employer Name: _____ Employer Address: _____

Employer Phone Number: _____ Work Schedule: _____

Make/Model of Vehicle: _____ License Plate No. (if known): _____

Vehicle Color (including unique characteristics such as paint, dents, etc.): _____

Additional information to help sheriff in locating the respondent
(other places the respondent may be staying, including addresses; any other court dates):

Does the respondent carry or possess any weapons? Yes No
If Yes, how many, what kinds, and where are they carried/stored?

Is the respondent a heavy drinker? Yes No _____ Drug user? Yes No _____

What if the respondent's information is incomplete?

What items are missing most often? (e.g., date of birth)

Group discussion!

Who gets served?

- ▶ Minors 14 years old and older → must be served themselves
- ▶ For minors younger than 14 → the parent or guardian must be served

Wis. Stat. 801.11

Digital issue...

Firearms forms

3 Additional Forms Must be Served w/ TRO:

1. *Information for Respondents Regarding the Surrender and Return of Firearms (CV-804)*
2. *Respondent's Statement of Possession of Firearms (CV-800)*
3. *Notice of Firearm Possession Penalties (CV-432)*

How do petitioners know service has been accomplished?

- ▶ When a petitioner obtains a TRO, **VPO (VINE Protection Order)** is available for notification of service, except for a child abuse TRO
 - Receive telephone and/or email notification when the TRO service is completed
 - Petitioner registers for these services only one time in order to receive service notification of the TRO, injunction, and firearm restrictions.
- ▶ To register, ideally petitioner provides (1) the respondent's full name and (2) full case #
 - However, petitioner can enter partial info of respondent's name and/or case number
 - Registration is available either online or by phone
- ▶ **Note: VINE (Victim Information and Notification Everyday)** is a notification system that provides petitioners notification when respondents are released from jail or other custody status of the offender

What if a TRO can't be served?

For All 4 Types of TROs

Court may extend time for an injunction hearing for 14 days if petitioner files an affidavit stating personal service was unsuccessful

Domestic Abuse and Harassment ONLY

If personal service of the TRO is not possible, the court may extend the TRO once for 14 days and allow the petitioner to serve the respondent by publication

(Wis. Stats. § 813.12(2)(a) and 813.125(2)(a))

Service by publication



If...

1. Hearing extended and
2. Petitioner files affidavit stating personal service unsuccessful due to respondent's concealment or otherwise – obtained from sheriff or private process server!

Then, the judge or circuit court commissioner shall inform the petitioner that they may serve the respondent by publication

Wis. Stat. 813.12(2)(a) and 813.125(2)(a)

Service by publication (cont.)



If with *reasonable diligence* the respondent cannot be personally served, service may be made

1. by publication of the petition and
2. by mailing if the respondent's address is known or can with reasonable diligence be ascertained
 - The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence

Wis. Stat. 801.11(1)(c)

Service by publication (cont.)



Legal notice shall be published in a newspaper likely to give notice in the area or to the person affected

Wis. Stat. 985.02

Newspaper must meet certain qualifications

Wis. Stat. 985.03

Publication for restraining order cases requires one insertion

Wis. Stat. 985.07

What if an injunction can't be served?

For all 4 Types of Injunctions

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), etc.)

Injunction extensions

- ▶ **Domestic abuse:** If injunction granted for less than 4 years + necessary for protection → shall extend until four years after the date first entered.
- ▶ **Child abuse:** If injunction granted for less than 6 months + necessary for protection → shall extend until 6 months after the date on which the court first entered it or until the child is 18, whichever is first.
- ▶ **Individual at risk:** If injunction granted for less than 6 months + necessary for protection → shall extend until 6 months after the date on which the court first entered the injunction.

Wis. Stats. 813.12(4)(c)2., 813.122(5)(d)2., 813.123(5)(c)1.

Extensions based on new risks

Court may grant extension...

- ▶ Up to **10 (5 for child abuse cases) years** based on substantial risk of sexual assault or homicide
- ▶ Permanently based on conviction for sexual assault

Is notice required to extend an injunction?

For **domestic abuse**, **child abuse**, and **individual at risk**:

“Notice need not be given to the respondent before extending an injunction... The clerk of courts shall notify the respondent after the court extends an injunction...”

Wis. Stat. 813.12(4)(c)4., 813.122(5)(d)4., 813.123(5)(c)4.

For **harassment** injunctions, the law does not specify who must receive notice.

Extending *expired* Injunctions

- ▶ **2.** When an injunction **expires**, the court shall extend the injunction if the petitioner states that an extension is necessary to protect him or her. This extension shall remain in effect until 4 years after the date the court first entered the injunction....

Wis. Stat. 813.12(4)(c)

Entering extended injunctions in TIME

- ▶ **(b)** Within one business day after an order or injunction is issued, extended, modified or vacated under this section, the clerk of the circuit court shall send a copy... to the sheriff ...
- ▶ **(c)** No later than 24 hours after receiving the information under par. (b), **the sheriff or other appropriate local law enforcement agency under par. (b) shall enter the information concerning an order or injunction issued, extended, modified or vacated under this section into the transaction information for management of enforcement system.** The sheriff or other appropriate local law enforcement agency shall also make available to other law enforcement agencies, through a verification system, information on the existence and status of any order or injunction issued under this section. The information need not be maintained after the order or injunction is no longer in effect.

Wis. Stat. 813.12(6)(b)

Can you re-enter an expired injunction in TIME?

What if the injunction wasn't issued in WI?

What if someone asks you to serve a restraining order issued in Puerto Rico?

- “**Foreign protection order**” is a “a protection order issued by a tribunal other than a tribunal of this state.” (Wis. Stat. 813.128)
- “**Tribunal**” is a “a court, agency, or other entity of a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, an American Indian tribe or band, or any territory or insular possession subject to the jurisdiction of the United States, authorized by law to issue or modify a protection order.” (Wis. Stat. 813.128(1g)(g))
- Likely, the restraining order should be served and enforced, but note the requirements under Wis. Stat. 813.128(2g)
- Enter order into TIME – these orders have the “same effect” as an order issued here (Wis. Stat. 813.128(2g)(b))

Entry of Foreign Protection Orders

- ▶ **The sheriff or law enforcement agency that receives a copy of a foreign protection order or of a modification of an order from the clerk under par. (b) shall enter the information received concerning the order or modification of an order into the transaction information for management of enforcement system no later than 24 hours after receiving the information.** The sheriff or law enforcement agency shall make available to other law enforcement agencies, through a verification system, information on the existence and status of any order or modification of an order filed under this subsection. The information need not be maintained after the order or modification is no longer in effect.

Wis. Stat. 806.247(3)(c)

Is this your county's practice?

Confidentiality

PART VI

Confidentiality of petitioner information



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Petitioner Address

- Confidential in all 4 restraining order types (Wisconsin statute)
- Address should not appear in court documents or on WCCA (CCAP)
- Filed on Confidential Address form (CV-502)

Petitioner Names

- Not confidential in documents for any restraining order type
- Name should not appear on WCCA for (1) domestic abuse cases or (2) harassment cases **IF** the filing fee is waived (federal law)
 - FWBCA code triggers name to be hidden on WCCA in harassment cases
 - Name can appear online for harassment cases if filing fee is not waived

• **Note:** Child abuse cases record/hearings are automatically confidential with class code 30710 (filed on/after 4/18/2014)

Firearms prohibitions and surrender process

PART VII

Firearms restrictions



Mandatory Firearms Restriction

- Domestic Abuse
- Child Abuse

- “An injunction ... shall ... require the respondent to surrender any firearms that he or she owns or has in his or her possession...”

Optional Firearms Restriction

- Harassment
- Individual at Risk

- If the court determines “... that the respondent may use a firearm to cause physical harm to another or to endanger public safety, the judge or circuit court commissioner may prohibit the respondent from possessing a firearm.”

Firearms surrender requirements

Court is required to hold a firearms surrender hearing when:

Court issues domestic abuse, child abuse, individual at risk (w/ firearm restriction), or harassment injunction (w/ firearm restriction)



Court finds that the respondent possesses firearm(s)

Wis. Stat. 813.1285 – Effective November 1, 2014

Firearm surrender forms

- ▶ *Respondent's Statement of Possession of Firearms (CV-800)*
- ▶ *Petitioner's Statement of Respondent's Possession of Firearms (CV-801) – optional*
- ▶ *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>

Filing & service of TRO – firearms forms

3 Additional Forms Must be Served w/ TRO:

1. *Information for Respondents Regarding the Surrender and Return of Firearms (CV-804)*
2. *Respondent's Statement of Possession of Firearms (CV-800)*
3. *Notice of Firearm Possession Penalties (CV-432)*

Optional Form for Petitioner:

- ▶ *Petitioner's Statement of Inventory of Possession of Firearms (CV-801)*

Injunction hearing – respondent is present

If court DOES GRANT the injunction, determine if respondent possesses firearms:

- ▶ Collect *Respondent's Statement of Possession of Firearms (CV-800)*
 - Verify information on the form and make inquiry on the record
- ▶ If used, collect *Petitioner's Statement of Possession of Respondent's Firearms (CV-801)*

Respondent present at hearing: injunction granted + respondent does possess firearms

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

Note: The statute refers to a “surrender and extend” order. CV-803 is the “surrender and extend” order referred to in the statutes.

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY		For Official Use
_____	Petitioner	<input type="checkbox"/> Amended
VS.	_____	Order to Surrender Firearms and Notice of Firearm Surrender Hearing
	Respondent	
_____	Address (City, State, Zip Code)	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		

Note: If you surrender your firearm(s) to the sheriff and file the surrender receipt with the clerk of court's office in the county named above within 48 hours of this order, you may not have to attend the Firearm Surrender Hearing if the court removes the hearing. If you choose to surrender your firearm(s) to a third party, and the third party was not present at the injunction hearing, both you and the third party must attend the Firearm Surrender Hearing.		

Injunction hearing – respondent is present (cont.)

▶ Order to Surrender Firearms (CV-803):

- ▶ Orders respondent to appear for firearm surrender hearing within 1 week of the injunction hearing
- ▶ Orders surrender of firearms and method
- ▶ States how long respondent has to surrender firearms
 - Any time period up to 48 hours
- ▶ Stays injunction and extends the TRO for same period of time respondent has to surrender firearms
- ▶ Specifies that respondent can possess firearms only for purpose of surrender

Firearm surrender options

- ▶ Surrender to sheriff
- ▶ Surrender to third party, if approved by the court – provide Notice of Firearm Possession Penalties (CV-432)
- ▶ Hybrid: Surrender to sheriff (even for third party surrender); if court and sheriff approves third party, third party can get firearms from sheriff

✓ Check applicable checkbox on CV-803

4. 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
- A. the sheriff of this county located at _____
Obtain a surrender receipt from the sheriff and bring it back to the court and file it with the clerk of court's office.
 - B. the sheriff of the county in which you reside located at _____
Obtain a surrender receipt from the sheriff and bring it back to the court and file it with the clerk of court's office.
 - C. another person ("third party"). You and the third party must appear at the Firearms Surrender Hearing scheduled above.
 - D. the sheriff's department located at _____
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.

Third party surrender

If the respondent wishes to surrender to a third party, the third party must:

- ▶ Be present in court
- ▶ Testify under oath that s/he received firearms
- ▶ Be approved by the court
 - Verify third party can possess firearms
 - Petitioner has the opportunity to object to third party

Practice tip to facilitate surrender to sheriff

- ▶ Have procedure for how respondent should surrender to law enforcement
- ▶ **For example:**
 - Is there a point person at sheriff's department? Perhaps they can provide business card to be given to respondents
 - Have written directions for respondent

Removing firearm surrender hearing from calendar

Firearm surrender hearing can be removed from court's calendar if the following occur:

- ▶ **Less Common:** Respondent surrenders to a third party and third party was present at injunction hearing and testified under oath that he/she received the firearms
- ▶ **More Common:** Respondent surrenders firearms to the sheriff within 48 hours of the injunction hearing and brings surrender receipt to the clerk before the firearm surrender hearing

Firearm surrender hearing – respondent is present

Determine if respondent complied with surrender order

- ▶ If applicable, collect *Respondent's Statement of Possession of Firearms (CV-800)*

Examples of compliance:

- ▶ Respondent surrendered firearms to sheriff and brought receipt
- ▶ Respondent wants to do third party surrender and brings third party

Firearm surrender hearing – respondent is present (cont.)

If respondent DID COMPLY with surrender order:

- ▶ Judge makes note on record, lift stay of injunction, and dismiss TRO (done orally)
- ▶ Case can be closed and injunction is in effect

Firearm surrender hearing – respondent is present (cont.)

If respondent DID NOT comply with surrender order, court has 3 options:

1. Notify the sheriff of the violation for investigation and appropriate action;
2. Schedule another firearm surrender hearing; or
3. Issue a warrant ordering the respondent to be brought before the court to show cause why the respondent should not be held in contempt
 - ▶ Failure to comply w/ firearm surrender order was added to definition of “contempt of court” under 785.01(1)(br)

Firearm surrender hearing – respondent is not present

If the respondent fails to attend the firearm surrender hearing, “the court shall issue an arrest warrant for the respondent.”

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)*

IN THE MATTER OF THE POSSESSION OF FIREARMS BY _____

Amended

**Order to Sheriff for Firearms Record Check/
Response of Sheriff**

Name of person subject to firearm restriction

Date of Birth

Case No. _____

The above-named person has petitioned the court to return firearms which were ordered surrendered in an injunction dated _____. A copy of the Petition is attached.

THE COURT ORDERS:

The sheriff of this county complete the bottom portion of this order within 5 business days of receipt indicating whether or not this person

- has been convicted of a felony in a state or federal court;
 - has been convicted of a misdemeanor crime of domestic violence;
 - is prohibited by an order of any federal or state court from possessing a firearm, other than the order in this case;
- OR
- is for any other reason known to the sheriff to be prohibited from possession of a firearm.

RESPONSE OF SHERIFF

As ordered, I conducted the following records check

- An NCIC records check, as of [Date] _____.
- A CIB records check, as of [Date] _____.
- A firearms restriction records check, as of [Date] _____.

This records check indicated that this person

- has not has been convicted of a felony in a state or federal court.
- has not has been convicted of a misdemeanor crime of domestic violence.
- is not is prohibited by an order of a federal or state court from possessing a firearm other than the order in this case.
- is not is prohibited from possession of a firearm for other reasons known to me.

(Attach further information for any affirmative answer.)

Signature

Title

Date

DISTRIBUTION:

1. Court
2. Sheriff

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CV-434

Return of firearms surrendered in another county

Infrequently asked question!

- ▶ If a respondent lives in one county but there is an injunction against them in another, they may have been ordered to surrender firearms in the county in which they live
- ▶ Statutes are silent on which county completes the record check related to the *Order to Sheriff for Firearms Record Check/Response of Sheriff (CV-434)*
 - As long as the form is completed, statute is satisfied
- ▶ **Possible practice:** if you receive an *Order to Sheriff for Firearms Record Check/Response of Sheriff (CV-434)* but the firearms were surrendered in another county...
 - Communicate with other sheriffs departments
 - Contact that sheriff department
 - Send them a copy
 - Determine who will complete the record check

Return of firearms (cont.)

Injunction Firearms

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

Evidence Firearms

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

Questions?



Contact information

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Kelsey Mullins, Legal Advisor

Legal Advisor, Office of Court Operations

Phone: (608) 267-7764

Email: Kelsey.Mullins@wicourts.gov



Safe at Home

ADDRESS CONFIDENTIALITY

Safe At Home: Address confidentiality program

- ▶ Victims of abuse can apply for address that will be legal substitute for their actual address
- ▶ Intent: Those who fear for their safety can maintain a private, confidential address



Program details

- ▶ Effective April 1, 2017 (2015 WI Act 356)
- ▶ Administered by DOJ, Office of Crime Victim Services
- ▶ Referred to as “Safe at Home” (SAH)
- ▶ Statutory Section – Wis. Stat. § 165.68

Who qualifies?

- ▶ Resident of Wisconsin
- ▶ Must be:
 - Victim of abuse,
 - Parent/guardian of a person who is a victim of abuse,
 - Resident of a household in which a victim also resides, or
 - Fear for physical safety
- ▶ Person's residence is unknown to abuser
- ▶ Person will not disclose actual address to abuser

What is “abuse”?

Defined as:

- ▶ Child abuse
- ▶ Domestic abuse
- ▶ Sexual abuse
- ▶ Stalking
- ▶ Trafficking

Wis. Stat. §165.68(1)(a)

Note: No requirement for criminal charges, TRO/injunction, or police report [Wis. Stat. § 165.68(2)(b)]

Enrollment process

Participant applies to Safe at Home (DOJ)

- ▶ No fee for application or enrollment
- ▶ 5 year enrollment
- ▶ Must develop a safety plan with advocate



- Complete plan. If you call 800-446-8000
- Complete plan. If you call 800-446-8000

1. Applicant
2. Applicant
3. The applicant
4. The applicant

An applicant has sought a

- Section 1
- All adult
- You may
- All minor

The primary reason I am enrolling is:

- I am a victim of an act of abuse ("Abuse" is defined as:
 - I'm a parent or guardian of a child
 - I reside with someone
 - I fear for my physical safety

My legal name is:

First

I may also receive mail under:

First

My date of birth:

Month <input type="text"/>	Date <input type="text"/>	Year <input type="text"/>
----------------------------	---------------------------	---------------------------

My actual residential address

Street Address

City

There are other adults that receive mail at this address:

I also plan to use my Safe at Home:

I may be contacted at:

Home Telephone #
()

Is it okay to leave a message on voicemail?

My preferred contact method is

Section 4: Applicant Affirmation & Authorization

I solemnly swear or affirm that (check all that apply):

- I am a victim, or parent or guardian of a victim, of an act or threat of child abuse, domestic abuse, sexual abuse, stalking, or trafficking, or a resident of a household in which the victim also resides;
- I am a person who fears for his or her physical safety or the physical safety of his or her child or ward;

AND,

- I am a resident of Wisconsin;
- I reside, or will reside, at a location in Wisconsin that is not known by the person who committed the abuse against or threatens me or my child/ward;
- I will not disclose my actual address (residential street address, school address, or work address) to the person who committed the abuse against or who threatens me or my child/ward;
- I developed a safety plan with a Department of Justice designated Application Assistant;
- To the best of my knowledge, all of the information I provided on this application is true and accurate.

I consent to (check all):

- Safe at Home notifying me if my participation will expire or if I become disenrolled for failure to update my name or actual address.
- The Department of Justice being designated as my legal agent for service of process and receipt of mail and authorize the Department of Justice to act on my behalf or in my place for the purpose of receiving mail and service of process.

I understand that (check all):

- Enrollment in Safe at Home is 5 years, unless I voluntarily cancel my enrollment or become disenrolled.
- I must notify Safe at Home if and when I change my actual address or legal name and that failure to do so may result in my disenrollment from Safe at Home.
- I may voluntarily cancel my enrollment at any time by submitting written notice to Safe at Home.
- If I receive notification from Safe at Home that I was disenrolled, I may update my information and/or reenroll in Safe at Home within 6 months from the date that Safe at Home provided notice of disenrollment.
- Upon unenrollment or disenrollment from Safe at Home, Safe at Home will no longer forward my mail and it will be returned to sender.
- I must personally update my address with all third parties after I unenroll from Safe at Home. I acknowledge that the US Postal Service cannot accept a change of address form or mail forwarding form from someone ending their participation in Safe at Home.
- Delivery of my mail being delayed due to participation in Safe at Home, including delivery of time sensitive materials and medications.
- Packages, parcels, and periodicals (magazines) and catalogues will not be forwarded to me UNLESS they are sent by state or local agency or unit of government or are clearly identifiable as containing a pharmaceutical or medical item.
- Safe at Home may notify state or local agencies and units of government that I am enrolled as a participant in Safe at Home when required by law to do so.
- The Department of Justice may disclose my actual address to law enforcement for official purposes or pursuant to a court order.

Enrollment process (cont.)

Participant is issued an “assigned address”

3902 Milwaukee St., S# Madison, WI 53703

- ▶ Used for private and public purposes, including service of process [Wis. Stat. § 165.68(3)(b)4.g.]
- ▶ Mail will go to SAH and be routed to participant’s “actual address” (5-10 day delay)
- ▶ State/local unit of government cannot refuse address, unless by law [Wis. Stat. § 165.68(5)(b)]

Program participant is responsible for providing notice of address change



Safe at Home Address Update Checklist

- Wisconsin Department of Motor Vehicles (DMV)
- Past and Present Court Records
- Voter Registration
- Wisconsin Department of Revenue
- Child Support Office
- Public Benefit Programs
- Municipal and County Government Entities
- Your employer
- Your/your child's school
- Utility companies
- Credit card companies
- Student Loan Servicer
- Banks & Credit Unions
- Insurance providers
- Cable service providers
- Phone service providers
- Memberships
- Family and friends

Notifying court of SAH enrollment

Participant can submit written request to clerk of court and clerk may not disclose any record that would reveal the participant's actual address, except per court order.

Wis. Stat. § 66.0504(2)

Criminal penalty

- ▶ Any person who intentionally releases information, including the participant's actual address, is guilty of a misdemeanor
[Wis. Stat. § 165.68(7)]
- ▶ Effective March 30, 2018

Requests for actual address

- ▶ SAH cannot release actual address without court order, **except to law enforcement** [Wis. Stat. § 165.68(4)(d)]
- ▶ No guidance in statutes for what court order process looks like, e.g.,
 - Is a hearing necessary?
 - What's the burden of proof?
 - Notification to participant?
 - What if there is no underlying case?

What does this mean for service?

Scenario: Safe at Home participant lives in Portage County, but has a Madison SAH address, and needs to be personally served.

Solution:

- ▶ Portage County Sheriff's Office should fax documents to the Dane County Sheriff's Office, noting person is a SAH participant.
- ▶ Dane County Sheriff's Office will serve documents to DOJ.
- ▶ The SAH Program Director will contact the participant.
- ▶ Information: <https://www.doj.state.wi.us/ocvs/courts-and-service-process>
- ▶ Once a document is served at DOJ, it is considered legally served on the SAH participant
- ▶ SAH will email the documents to the participant, if requested