

## **Individuals at Risk Temporary Restraining Order and Injunction Checklist:**

### **Wis. Stat. §813.123**

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#### **1. Who may petition for an individual at risk restraining order? See [§813.123\(2\)\(a\)](#).**

- a. An individual at risk
- b. Any person acting on behalf of an individual at risk, an elder-adult-at-risk agency, or an adult-at-risk agency.

*If someone other than the victim is seeking the restraining order: (1) the petitioner must give notice to the individual on whose behalf the restraining order is sought; and (2) the court must appoint a guardian ad litem to independently investigate and report to the court whether issuance of the order is in the individual's "best interests."*

#### **2. Who is an individual at risk for purposes of filing an individuals at risk restraining order?**

See [§§813.123\(1\)\(ep\)](#), [55.01\(1e\)](#) and [46.90\(1\)\(br\)](#).

An adult at risk or an elder adult at risk is an:

1. Adult at risk adult is a person 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, self-neglect, or financial exploitation;
2. Elder adult at risk is 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.

#### **3. What type of abuse must be alleged in the petition to obtain a TRO or injunction?**

See [§§813.123\(4\)\(a\)2.a](#) & [813.123\(4\)\(a\)2.b](#). Also see [§§55.05](#); [55.06](#); [46.90\(5m\)](#).

- a. 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\(5m\)](#); or
- b. 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; or
- c. Physical abuse, emotional abuse, sexual abuse, treatment without consent, unreasonable confinement or restraint, financial exploitation, neglect, harassment, or stalking of an individual at risk or the mistreatment of an animal.

**NOTE:** A petitioner can also request: 1) respondent not be allowed to engage in abuse of a household pet; 2) order from court to allow petitioner out of family wireless phone service contract plan. See [§§813.123\(4\)\(a\)&\(ar\)](#) and [§813.123\(5c\)](#).

#### **4. Where can an individual at risk petition be filed? See [§§801.50\(2\)\(a\)](#) and [\(2\)\(c\)](#).**

- a. County where claim arose; or
- b. County where defendant (respondent) resides.

#### **5. What will it cost to file an individual at risk petition? See [§§814.61\(1\)\(d\)](#) and [814.70](#).**

There is no cost to file the petition, serve the petition or for the cost of travel to serve the petition.

**6. What is a temporary restraining order? How does one file a TRO petition?** See [§813.125\(3\)](#).

A TRO is an order in effect up to 14 days until the "permanent" order, known as an injunction, is granted. Go to the courthouse and ask for an individual at risk TRO petition. Forms are also available at: [https://www.wicourts.gov/forms1/circuit/ccform.jsp?FormName=&FormNumber=&beg\\_date=&end\\_date=&StatuteCite=&Category=42&SubCat=Individual%20at%20Risk%20Restraining%20Order/Injunctions](https://www.wicourts.gov/forms1/circuit/ccform.jsp?FormName=&FormNumber=&beg_date=&end_date=&StatuteCite=&Category=42&SubCat=Individual%20at%20Risk%20Restraining%20Order/Injunctions). Fill out the petition. Take the petition to a judge/court commissioner, who is to sign it if the petition contains one of the relationships and one or more types of abuse described above. You can appear *ex parte* (one party only) to file a TRO. You may wish to seek help from a domestic abuse program to file.

**7. What must a court find to order an individual at risk restraining order?** See [§§813.123\(4\)\(a\)](#) and [\(ar\)](#).

- a. All the allegations in the petition are true.
- b. If someone other than the individual at risk is the petitioner:
  - i. the petitioner gave notice of the petition to that individual at risk.
  - ii. the court appointed a guardian ad litem for the individual at risk.
  - iii. whether or not the individual at risk is objecting, the guardian ad litem believes it is in the individual's at risk best interests for the temporary restraining order to be issued and the court agrees.

**8. What will happen at the injunction hearing?** See [§813.125\(4\)](#).

The respondent must receive a copy of the petition which contains **notice of the hearing**, and may, but is not required, to appear. The parties can appear on their behalf, with counsel or with an advocate. Most courts allow both parties to **testify and cross-examine** the other party. Based on what one or both parties say at the hearing, the court will deny or grant an injunction for up to 4 years.

**9. What can a court order if the petition is granted?** See [§§813.123\(4\)\(a\)](#) and [\(ar\)](#).

- a. Avoid interference with an investigation of the elder adult at risk under [§46.90](#) or the adult at risk under [§55.043](#), the delivery of protective services to the individual at risk under [§55.05](#) or a protective placement of the individual at risk under [§55.06](#), or the delivery of services to the elder adult at risk under [§46.90\(5m\)](#).
- b. Cease engaging in or threatening to engage in the abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk or mistreatment of an animal.
- c. Avoid the residence of the individual at risk or any other location temporarily occupied by the individual at risk, or both.
- d. Avoid contacting or causing any person other than a party's attorney or a law enforcement officer to contact the individual at risk.
- e. Engage in any other appropriate remedy not inconsistent with the remedies requested in the petition.
- f. Refrain from removing, hiding, damaging, harming, mistreating, or disposing of a household pet.
- g. Allow petitioner or family member or household member of petitioner to retrieve household pet.
- h. Allow petitioner out of family wireless phone service contract plan; petitioner may continue using wireless telephone number. [§813.123\(5c\)](#).