

## **TEN POINTS TO CONSIDER BEFORE CHOOSING TO FILE A RESTRAINING ORDER**

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

### **1. PURPOSE OF A RESTRAINING ORDER**

A restraining order is a court order. In the order, the court may be able to order the abuser not to hurt you physically or sexually, to stay away from you, move out of the house, have no contact with you, or stop stalking or harassing you. However, not all abusive behavior falls under the law; each restraining order petition outlines what behavior the law covers.

### **2. TWO STEP PROCESS**

You start the process of obtaining an order by requesting papers for a temporary restraining order (TRO) and/or injunction. These papers are called the petition. The person completing the petition is called the petitioner. The person against whom the petition is filed is called the respondent because that person has the chance to respond to the petition. When the petitioner files the petition, the court decides whether or not to issue a TRO based on the information provided in the petition. If the court grants the TRO, the petitioner is given a hearing date within 14 days for domestic abuse (see Sec. [813.12\(3\)\(c\)](#)), child abuse (see Sec. [813.122\(4\)\(c\)](#)), individuals at risk (see Sec. [813.123\(4\)\(c\)](#)) and harassment (see Sec. [813.125\(3\)\(c\)](#)) to come to court and testify and ask the court to order a “final” order, known as an injunction. The hearing at which one asks for the “final” order is an Injunction Hearing. An injunction can be granted for up to 2 years or age 18 (whichever happens first) for child abuse (see Sec. [813.122\(5\)\(d\)1](#)); and up to 4 years for domestic abuse (see Sec. [813.12\(4\)\(c\)1](#)), harassment (see Sec. [813.125\(4\)\(c\)](#)), and individuals at risk (see Sec. [813.123\(5\)\(c\)1](#)). If petitioner can show substantial risk of 1<sup>st</sup> or 2<sup>nd</sup> degree homicide or 1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup> degree sexual assault, the court can order the injunction for up to 5 years for child abuse orders and up to 10 years for domestic abuse, harassment or individuals at risk restraining orders.

### **3. SERVICE**

After the court grants or denies the TRO, the respondent must be notified of any TRO and the court date for the injunction hearing. This process is called serving the order. It is the petitioner’s responsibility to make sure the petition is served which means the petitioner needs to provide information to aid service. The clerk of courts will forward any restraining order documents which need service and the Sheriff shall assist the petitioner in serving them. If the Sheriff cannot serve the papers, the petitioner can either do service by publication for domestic abuse and harassment orders or hire a private process server. The respondent must be served with the petition **before** the court can hold an injunction hearing. To verify that service occurred, the petitioner can register online at [www.vinelink.com](http://www.vinelink.com) or call 1-855-948-7648.

### **4. RESPONDENT WILL GET COPY OF THE PETITION**

When Sheriff’s Department or private process server serves the papers, the respondent is given a copy of the petition and any attached documents; s/he will read all statements in petition.

## **5. PETITIONER MUST BE PREPARED TO TESTIFY AT INJUNCTION HEARING; RESPONDENT MIGHT COME TO COURT**

The petitioner must attend the injunction hearing to receive an injunction against the respondent. The respondent is not required to attend the injunction hearing – the respondent is only required to receive **notice** of the hearing. The petitioner may be asked to “testify” - to explain why s/he is seeking this order and how s/he qualifies under the law. **If** the respondent attends the hearing, s/he might argue that the statements in the petition or petitioner’s testimony are untrue and ask the court to deny the injunction. The court is better able to grant the order if the petitioner brings evidence to the court.

## **6. SERVICE REPRESENTATIVE (ADVOCACY SERVICES)**

You can have an advocate at the injunction Hearing for a domestic abuse or harassment order if you and the respondent are adults. You must inform the court orally or in writing of your choice of an advocate, called a service representative. This is done by either telling the court at the beginning of the hearing or by completing a form entitled Service Representative Selection. The advocate must be from a victim service organization. The service representative is NOT an attorney and cannot speak for you at the hearing.

## **7. FIREARMS**

If a domestic abuse or child abuse injunction is granted, the respondent will be **ordered** to surrender any firearms. If a harassment or individual at risk injunction is filed, the petitioner can request the court to order the respondent to surrender her/his firearms **if** the petitioner can show the court the respondent may use them to cause physical harm to another or to endanger public safety; the court may or may not order the surrender. If the respondent wants to surrender firearms to a 3<sup>rd</sup> party, the 3<sup>rd</sup> party must attend a hearing.

## **8. ENFORCEMENT**

Violation of the order is a crime. If the police believe the respondent violated the provisions of a restraining order – whether a TRO or an injunction - they are mandated to make an arrest for a violation of all four types of WI orders. However, the respondent must have been served with the TRO or the petition and notice of the injunction hearing in order to be found in violation. It is a good idea for you to keep your copy of the TRO and/or injunction with you at all times to prove an order exists; the respondent can be served with the petitioner’s copy, if needed.

## **9. YOUR ORDER MUST BE ENFORCED ANYWHERE**

If the court grants a TRO or injunction, the WI order is to be enforced by a law officer in every state, territory, U.S. possession or tribe. Enforcement outside WI is called “full faith and credit of a foreign protection order.” This law is noted at bottom of each order. See this [link](#) for more information

## **10. SAFETY PLANNING**

Restraining orders do not guarantee safety. It is a good idea to do safety planning with an advocate - discuss your/your children’s safety before, during and after an incident of abuse. Click [here](#) for a sample safety plan form.