

### **813.123 Restraining orders and injunctions for individuals at risk.**

#### **(1) DEFINITIONS.** In this section:

- (a)** "Abuse" has the meaning given in s. 46.90 (1) (a).
- (ae)** "Adult at risk" has the meaning given in s. 55.01 (1e).
- (am)** "Adult-at-risk agency" has the meaning given in s. 55.01 (1f).
- (b)** "Bodily harm" has the meaning given in s. 46.90 (1) (aj).
- (br)** "Caregiver" has the meaning given in s. 46.90 (1) (an).
- (cg)** "Elder adult at risk" has the meaning given in s. 46.90 (1) (br).
- (d)** "False representation" includes a promise that is made with the intent not to fulfill the promise.
- (dm)** "Financial exploitation" has the meaning given in s. 46.90 (1) (ed).
- (e)** "Great bodily harm" has the meaning given in s. 939.22 (14).
- (eg)** "Harassment" has the meaning given in s. 813.125 (1) (am).
- (ek)** "Household pet" means a domestic animal that is not a farm animal, as defined in s. 951.01 (3), that is kept, owned, or cared for by an individual at risk or an elder adult at risk or by a family member or a household member of an individual at risk or an elder adult at risk.
- (ep)** "Individual at risk" means an elder adult at risk or an adult at risk.
- (fm)** "Mistreatment of an animal" means cruel treatment of any animal owned by or in service to an individual at risk.
- (g)** "Neglect" has the meaning given in s. 46.90 (1) (f).
- (gr)** "Self-neglect" has the meaning given in s. 46.90 (1) (g).
- (gs)** "Stalking" means engaging in a course of conduct, as defined in s. 940.32 (1) (a).

#### **(2) COMMENCEMENT OF ACTION AND RESPONSE.**

- (a)** No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under sub. (6). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. The 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 may be a petitioner under this section. If the petition is filed by a person other than the individual at risk, the petitioner shall serve a copy of the petition on the individual at risk. Section 813.06 does not apply to an action under this section. The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at that hearing. The court shall inform the petitioner in writing that, if the petitioner chooses to have the documents in the action served by the sheriff, the petitioner should contact the sheriff to verify the proof of service of the petition.
- (b)** The court may go forward with a petition filed under sub. (6) if the individual at risk has been adjudicated incompetent under ch. 880, 2003 stats., or ch. 54, notwithstanding an objection by an individual at risk who is the subject of the petition, or an objection by the guardian of the individual at risk.

#### **(3) GENERAL PROCEDURE.**

- (a)** Procedure for an action under this section is in 2 parts. First, if the petitioner requests a temporary restraining order, the court or circuit court commissioner shall issue or refuse to issue that order. Second, the court shall hold a hearing under sub. (5) on whether to issue an injunction, which is the final relief. If the court or circuit court commissioner issues a temporary restraining order, the order shall set forth the date for the hearing on an injunction. If the court or circuit court commissioner does not issue a temporary restraining order, the date for the hearing shall be set upon motion by either party.
- (b)** The court or circuit court commissioner, on its or his or her own motion or the motion of any party, shall order that a guardian ad litem be appointed for the individual at risk, if the petition under sub. (6) was filed by a person other than the individual at risk, and may order that a guardian ad litem be appointed in other instances when justice so requires.
- (c)** The court or circuit court commissioner, on its or his or her own motion or the motion of any party, may order any of the following:
  - 1.** That all persons, other than the individual at risk, the parties, their attorneys, a representative of the adult-at-risk agency or elder-adult-at-risk agency, witnesses, court personnel, and any guardian or any guardian ad litem, be excluded from any hearing under this section.

2. That access to any record of an action under this section be available only to the individual at risk, the parties, their attorneys, any guardian or any guardian ad litem, the adult-at-risk agency or elder-adult-at-risk agency, court personnel, and, upon appeal, any applicable court.

**(4) TEMPORARY RESTRAINING ORDER.**

- (a)** Unless the individual at risk, guardian, or guardian ad litem consents in writing and the judge or circuit court commissioner agrees that the contact is in the best interests of the individual at risk, a judge or circuit court commissioner shall issue a temporary restraining order, as specified in par. (ar), if all of the following occur:
  1. The petitioner submits to the judge or circuit court commissioner a petition alleging the elements set forth under sub. (6).
  2. The judge or circuit court commissioner finds reasonable grounds to believe any of the following:
    - a. That the respondent has interfered with or, based on prior conduct of the respondent, may interfere with an investigation of the individual at risk, the delivery of protective services to or a protective placement of the individual at risk under ch. 55, or the delivery of services to an elder adult at risk under s. 46.90 (5m); and that 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.
    - b. That the respondent engaged in or threatened to engage in the abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk or the mistreatment of an animal.
- (ar)** A temporary restraining order issued under par. (a) shall order the respondent to do one or more of the following:
  1. Avoid interference with an investigation of the elder adult at risk under s. 46.90 or 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).
  2. 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.
  - 2m. Refrain from removing, hiding, damaging, harming, or mistreating, or disposing of, a household pet and allow the individual at risk or a guardian, guardian ad litem, family member, or household member of the individual at risk acting on his or her behalf to retrieve a household pet.
  3. Avoid the residence of the individual at risk or any other location temporarily occupied by the individual at risk, or both.
  4. Avoid contacting or causing any person other than a party's attorney or a law enforcement officer to contact the individual at risk.
  5. Engage in any other appropriate remedy not inconsistent with the remedies requested in the petition.
- (b)** Notice need not be given to the respondent before issuing a temporary restraining order under this subsection. A temporary restraining order may be entered only against the respondent named in the petition.
- (c)** The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub. (5), except that the court may extend the temporary restraining order under s. 813.1285. A judge shall hold a hearing on issuance of an injunction within 14 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties, extended under s. 801.58 (2m), or extended once for 14 days upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence. A judge or court commissioner may not extend the temporary restraining order in lieu of ruling on the issuance of an injunction.

**(5) INJUNCTION.**

- (a)** Unless the individual at risk, guardian, or guardian ad litem consents in writing to a contact and the judge agrees that the contact is in the best interests of the individual at risk, a judge may grant an injunction ordering the respondent as specified in par. (ar), if all of the following occur:
  1. The petitioner files a petition alleging the elements set forth under sub. (6).
  2. The petitioner serves upon the respondent a copy of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of the time for hearing on the issuance of the injunction. The notice served under this subdivision shall inform the respondent that, if the judge or circuit court commissioner issues an injunction, the judge or circuit court commissioner may also order the respondent not to possess a firearm while the injunction is in effect. The person who serves the respondent with the notice shall also provide the respondent with all of the following information:

- a. Notice of the requirements and penalties under s. 941.29 and notice of any similar applicable federal laws and penalties.
  - b. An explanation of s. 813.1285, including the procedures for surrendering a firearm and the circumstances listed under s. 813.1285 under which a respondent must appear at a hearing to surrender firearms.
  - c. A firearm possession form developed under s. 813.1285 (5) (a), with instructions for completing and returning the form.
3. After hearing, the judge finds reasonable cause to believe any of the following:
- a. That the respondent has interfered with or, based upon prior conduct of the respondent, may interfere with an investigation of the elder adult at risk under s. 46.90 or the adult at risk under s. 55.043 and that the interference complained of, if continued, would make it difficult to determine if abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk or mistreatment of an animal is occurring or may recur.
  - b. That the respondent has interfered with the delivery of protective services to or a protective placement of the individual at risk under ch. 55 after the offer of protective services or protective placement has been made and the individual at risk or his or her guardian, if any, has consented to receipt of the protective services or protective placement; or that the respondent has interfered with the delivery of services to an elder adult at risk under s. 46.90 (5m).
  - c. That the respondent has engaged in or threatened to engage in the abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk or the mistreatment of an animal.
- (ar)** An injunction granted under par. (a) shall order the respondent to do one or more of the following:
- 1. Avoid interference with an investigation of the elder adult at risk under s. 46.90 or 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).
  - 2. Cease engaging in or threatening to engage in the abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk or the mistreatment of an animal.
  - 2m. Refrain from removing, hiding, damaging, harming, or mistreating, or disposing of, a household pet and allow the individual at risk or a guardian, guardian ad litem, family member, or household member of the individual at risk acting on his or her behalf to retrieve a household pet.
  - 3. Avoid the residence of the individual at risk or any other location temporarily occupied by the individual at risk, or both.
  - 4. Avoid contacting or causing any person other than a party's attorney or a law enforcement officer to contact the individual at risk.
  - 5. Any other appropriate remedy not inconsistent with the remedies requested in the petition.
- (b)** The injunction may be entered only against the respondent named in the petition.
- (c)**
- 1. An injunction under this subsection is effective according to its terms, but for not more than 4 years, except as provided in par. (d).
  - 2. When an injunction expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect the individual at risk. This extension shall remain in effect until 6 months after the date on which the court first entered the injunction, except as provided in par. (d).
  - 3. If the petitioner states that an extension is necessary to protect the individual at risk, the court may extend the injunction for not more than 2 years, except as provided in par. (d).
  - 4. Notice need not be given to the respondent before extending an injunction under subd. 2. or 3. The clerk of courts shall notify the respondent after the court extends an injunction under subd. 2. or 3.
- (d)**
- 1. A judge may, upon issuing an injunction or granting an extension of an injunction issued under this subsection, order that the injunction is in effect for not more than 10 years, if the court finds, by a preponderance of the evidence stated on the record, that any of the following is true:
    - a. There is a substantial risk that the respondent may commit first-degree intentional homicide under s. 940.01, or 2nd-degree intentional homicide under s. 940.05, against the person at risk.
    - b. There is a substantial risk that the respondent may commit sexual assault under s. 940.225 (1), (2), or (3), or under s. 948.02 (1) or (2), against the person at risk.

2. This paragraph does not prohibit a petitioner from requesting a new temporary restraining order under sub. (4) or injunction under this subsection before or at the expiration of a previously entered order or injunction.

**(5c) ORDER; TELEPHONE SERVICES.**

- (a) Unless a condition described in par. (b) exists, a judge or circuit court commissioner who issues an injunction under sub. (5) may, upon request by the petitioner, order a wireless telephone service provider to transfer to the petitioner the right to continue to use a telephone number or numbers indicated by the petitioner and the financial responsibility associated with the number or numbers, as set forth in par. (c). The petitioner may request transfer of each telephone number he or she, or a minor child in his or her custody, uses. The order shall contain all of the following:
  1. The name and billing telephone number of the account holder.
  2. Each telephone number that will be transferred.
  3. A statement that the provider transfers to the petitioner all financial responsibility for and right to the use of any telephone number transferred under this subsection. In this subdivision, "financial responsibility" includes monthly service costs and costs associated with any mobile device associated with the number.
- (b) A wireless telephone service provider shall terminate the respondent's use of, and shall transfer to the petitioner use of, the telephone number or numbers indicated in par. (a) unless it notifies the petitioner, within 72 hours after it receives the order, that one of the following applies:
  1. The account holder named in the order has terminated the account.
  2. A difference in network technology would prevent or impair the functionality of a device on a network if the transfer occurs.
  3. The transfer would cause a geographic or other limitation on network or service provision to the petitioner.
  4. Another technological or operational issue would prevent or impair the use of the telephone number if the transfer occurs.
- (c) The petitioner assumes all financial responsibility for and right to the use of any telephone number transferred under this subsection. In this paragraph, "financial responsibility" includes monthly service costs and costs associated with any mobile device associated with the number.
- (d) A wireless telephone service provider may apply to the petitioner its routine and customary requirements for establishing an account or transferring a number, including requiring the petitioner to provide proof of identification, financial information, and customer preferences.
- (e) A wireless telephone service provider is immune from civil liability for its actions taken in compliance with a court order issued under this subsection.

**(5g) CONFIDENTIALITY OF ADDRESSES.** The petition under sub. (6) and the court order under sub. (4), (5), or (5c) may not disclose the address of the petitioner or of the individual at risk. The petitioner shall provide the clerk of circuit court with the address of the petitioner and of the individual at risk when he or she files a petition under this section. The clerk shall maintain the addresses in a confidential manner.

**(5m) RESTRICTION ON FIREARM POSSESSION; SURRENDER OF FIREARMS.**

- (a) If a judge or circuit court commissioner issues an injunction under sub. (5) and the judge or circuit court commissioner determines, based on clear and convincing evidence presented at the hearing on the issuance of the injunction, 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.
- (b) An order prohibiting a respondent from possessing a firearm issued under par. (a) remains in effect until the expiration of the injunction issued under sub. (5).
- (c) An order issued under par. (a) that prohibits a respondent from possessing a firearm shall do all of the following:
  1. Inform the respondent named in the petition of the requirements and penalties under s. 941.29 and any similar applicable federal laws and penalties.
  2. Except as provided in par. (d), require in writing the respondent to surrender any firearms that he or she owns or has in his or her possession to the sheriff of the county in which the action under this section was commenced, to the sheriff of the county in which the respondent resides, or to another person

designated by the respondent and approved by the judge or circuit court commissioner, in accordance with s. 813.1285.

(d) If the respondent is a peace officer, an order issued under par. (a) may not require the respondent to surrender a firearm that he or she is required, as a condition of employment, to possess whether or not he or she is on duty.

(6) PETITION. The petition shall allege facts sufficient to show the following:

(a) The name of the petitioner and the individual at risk.

(b) The name of the respondent and that the respondent is an adult.

(c) That the respondent interfered with or, based on prior 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.

(d) If the petitioner knows of any other court proceeding in which the petitioner is a person affected by a court order or judgment that includes provisions regarding contact with the respondent, any of the following that are known by the petitioner:

1. The name or type of the court proceeding.

2. The date of the court proceeding.

3. The type of provisions regarding contact between the petitioner and respondent.

(7) INTERFERENCE ORDER. Any order under sub. (4) (ar) 1. or 2. or (5) (ar) 1. or 2. also shall prohibit the respondent from intentionally preventing a representative or employee of the county protective services agency from meeting, communicating, or being in visual or audio contact with the adult at risk, except as provided in the order.

(8) ENFORCEMENT ASSISTANCE.

(a)

1. The clerk of the circuit court shall forward to the sheriff any temporary restraining order, injunction, or other document or notice that must be served on the respondent under this section and the sheriff shall assist the petitioner in executing or serving the temporary restraining order, injunction, or other document or notice on the respondent. The petitioner may, at his or her expense, elect to use a private server to effect service.

2. If the petitioner elects service by the sheriff, the clerk of circuit court shall provide a form supplied by the sheriff to the petitioner that allows the petitioner to provide information about the respondent that may be useful to the sheriff in effecting service. The clerk shall forward the completed form to the sheriff. The clerk shall maintain the form provided under this subdivision in a confidential manner.

(b) Within one business day after an order or injunction is issued, extended, modified or vacated under this section, the clerk of circuit court shall send a copy of the order or injunction, or of the order extending, modifying or vacating an order or injunction, to the sheriff or to any other local law enforcement agency which is the central repository for orders and injunctions and which has jurisdiction over the vulnerable adult's premises.

(c) The sheriff or other appropriate local law enforcement agency under par. (b) shall enter the information received under par. (b) concerning an order or injunction issued, extended, modified or vacated under this section into the transaction information for management of enforcement system no later than 24 hours after receiving the information and shall 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.

(d) A law enforcement agency and a clerk of circuit court may use electronic transmission to facilitate the exchange of documents under this section. Any person who uses electronic transmission shall ensure that the electronic transmission does not allow unauthorized disclosure of the documents transmitted.

(8m) NOTICE TO DEPARTMENT OF JUSTICE.

(a) If an order prohibiting a respondent from possessing a firearm is issued under sub. (5m), the clerk of the circuit court shall notify the department of justice of the existence of the order prohibiting a respondent from possessing a firearm and shall provide the department of justice with information concerning the period during which the order is in effect and information necessary to identify the respondent for purposes of

responding to a request under s. 165.63 or for purposes of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

- (b) Except as provided in par. (c), the department of justice may disclose information that it receives under par. (a) only to respond to a request under s. 165.63 or as part of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).
- (c) The department of justice shall disclose any information that it receives under par. (a) to a law enforcement agency when the information is needed for law enforcement purposes.

**(9) ARREST.**

**(am)** A law enforcement officer shall arrest and take a person into custody if all of the following occur:

1. A petitioner presents the law enforcement officer with a copy of an order issued under sub. (4) or an injunction issued under sub. (5), or the law enforcement officer determines that such an order exists through communication with appropriate authorities.
2. The law enforcement officer has probable cause to believe that the person has violated the order issued under sub. (4) or the injunction issued under sub. (5).

(c) A respondent who does not appear at a hearing at which the court orders an injunction under sub. (5) but who has been served with a copy of the petition and notice of the time for hearing under sub. (5) (a) 2. that includes the information required under sub. (5) (a) 2. a., b., and c. has constructive knowledge of the existence of the injunction and may be arrested for violation of the injunction regardless of whether he or she has been served with a copy of the injunction.

**(10) PENALTY.** Whoever intentionally violates a temporary restraining order or injunction issued under this section shall be fined not more than \$1,000 or imprisoned for not more than 9 months or both.

**(12) NOTICE OF FULL FAITH AND CREDIT.** An order or injunction issued under sub. (4) or (5) shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members.

**History:** 1993 a. 445; 1995 a. 71, 306; 1997 a. 27; 2001 a. 61; 2005 a. 264, 387, 388; 2007 a. 45, 96, 124; 2009 a. 262; 2013 a. 223, 311, 321, 322; 2015 a. 109, 195, 253, 349, 353; s. 35.17 correction in (8) (a) 2.

The First 30 Months: Wisconsin's Individual-at-Risk Restraining Order. Abramson, Mansfield, & Raymond. Wis. Law. Nov. 2010.