

## Restraining Orders for Sexual Assault Victims

This fact sheet provides a general overview of the four different kinds of restraining orders (ROs) available to sexual assault victims in Wisconsin. While this fact sheet focuses on the availability of ROs for sexual assault victims, these ROs may be available to victims of other forms of violence, abuse, or harassment. For more detailed information on restraining orders please see the document, "Restraining Orders in Wisconsin" created by the Wisconsin Coalition Against Domestic Violence at <http://www.endabusewi.org/FileStream.aspx?FileID=861>.

A restraining order is legally referred to as an injunction and commonly referred to as a stay away order or a protective order. It is sought by one person, the petitioner, against another person, the respondent. If granted, these court orders enjoin (prohibit) the respondent from engaging in the abusive behavior and may require the respondent to stay away from the petitioner. Arrest is mandatory when a respondent violates the injunction. There is no fee for filing a domestic abuse, child abuse or individual at risk restraining order. If a harassment order is filed on the basis of sexual assault or stalking, there is no fee. In general, the process to obtain a RO is as follows:

- Fill out a petition describing the abusive behavior and asking for protection. The petition can be filed in the county where the behavior occurred, where the petitioner resides, or where the respondent resides. A domestic abuse petition can also be filed in the county where the petitioner temporarily resides. An individual at risk petition can only be filed in the county where the claim arose or where the respondent resides. The petition must contain information about abusive behavior (sometimes called the grounds) to obtain a protection order.
- Obtain a temporary restraining order. The first step to get an order is to ask for a temporary restraining order (TRO). The petitioner files for an order on her/his own. A TRO will be granted if the court finds reasonable grounds to believe the respondent engaged in abusive behavior. The court should act on the petition for a TRO when it is filed, and either grant or reject it. Even if the TRO is not granted, either party may request a hearing for an injunction. A TRO remains in effect for up to 14 days.
- Serve notice on the respondent. The court must give notice to the respondent that a TRO was issued and that he or she has the opportunity to appear at the final injunction hearing. The petitioner may request that the court order the local sheriff to provide service.
- Final injunction hearing. A final injunction hearing must occur within 14 days of the TRO issuance. At this hearing, the petitioner must establish that the abusive behavior occurred. If the court has a reasonable belief that the abusive behavior occurred, it will issue a final RO (injunction).

RO forms can be found at <http://www.wicourts.gov/forms1/circuit.htm>, under the heading "Civil." In addition, the clerk of court in your county can provide you with the appropriate forms and limited information as to how to complete them. A list of clerks of court by county can be found at <http://www.wicourts.gov/contact/docs/clerks.pdf>. For additional filing information please contact your local sexual assault or domestic violence program.

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Sexual assault victims sometimes ask if ROs are necessary if there is a criminal action pending. ROs do provide protections that are unavailable through the criminal trial process, such as the authority for law enforcement to make an immediate arrest if a violation occurs. Sexual assault victims also ask if the RO process can detrimentally impact a criminal case or ask which RO to obtain if the victim's situation would allow him or her to obtain more than one type of RO. These can be complicated questions. The victim may want to discuss these concerns with the district attorney or with an advocate at a sexual assault program. Ultimately, these decisions lie with the victim because the victim is the person best able to determine what will keep him or her safe. For a list of sexual assault programs, please see [www.wcasa.org](http://www.wcasa.org). In addition to providing information to victims about restraining orders, advocates can help victims develop a detailed safety plan and let the victim know what other services might be available to him or her.

### **HARASSMENT RESTRAINING ORDERS (HROs)**

A HRO may be the only remedy available to some victims sexually assaulted or stalked by someone with whom they have not had an intimate relationship. Grounds include but are not limited to: striking, shoving, kicking or otherwise subjecting another person to physical contact or attempting or threatening to do the same; engaging in a course of conduct or repeatedly committing acts which harass or intimidate another person and serve no legitimate purpose; engaging in child abuse (see definition below), sexual assault, or stalking. One act of sexual assault can be grounds to obtain this restraining order.

**Who can file?** Any person harassed, including an adult; a child; the parent, stepparent, or legal guardian of a child who was harassed; or a child's guardian ad litem. A few additional individuals can petition in a proceeding brought under Wis. Stat. §48.13 (child in need of protection or services).

**Against whom can a HRO be granted?** Any person, child or adult, who engages in harassment as described above.

**Remedies:** The respondent can be ordered to cease or avoid the harassment of the petitioner, to avoid the residence of the petitioner (this can be ordered temporarily even when the respondent owns the property), or any combination of these remedies. The RO can be in effect up to 4 years. A firearm surrender is not automatic, but may be requested by the petitioner of the HRO.

### **DOMESTIC ABUSE RESTRAINING ORDER (DARO)**

In general, the DARO is a remedy for those abused in intimate relationships. Sexual assault is a common form of domestic abuse by intimate partners. Grounds for a DARO include but are not limited to: intentional infliction of physical pain; physical injury or illness; intentional impairment of physical condition; sexual assault (1st – 3rd degree); intentional damage of property; or threats to engage in any of the above.

**Who can file?** An adult family member, adult household member, adult former spouse, adult with whom the petitioner has a child in common, adult with whom the petitioner has or had a dating relationship, an adult under a caregiver's supervision, or a guardian of an individual adjudicated incompetent. The petitioner must be the victim except for the guardian of an incompetent individual.

**Against whom can a DARO be granted?** An adult family member, adult household member, adult former spouse, adult with whom the petitioner has a child in common, adult with whom the petitioner has or had a dating relationship, or an adult caregiver.

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**Remedies:** The respondent can be ordered to refrain from committing acts of domestic abuse against the victim, avoid the victim's residence or any other location temporarily occupied by the victim (this can be ordered temporarily even when the respondent owns the property), avoid contacting or having others contact the victim, any combination of these remedies, or any other appropriate remedy not inconsistent with the remedies requested in the petition. If a DARO is granted, it must be for the duration requested by the victim, but may not exceed four years. If a DARO is granted, firearms surrender is mandatory.

### **DOMESTIC ABUSE RESTRAINING ORDER (CARO)**

This restraining order is used when children are abused. Grounds include but are not limited to: sexual assault (1st – 4th degree); sexual assault of a child (1st and 2nd degree); repeated acts of sexual assault; sexual exploitation of a child; permitting, allowing or encouraging a child to engage in child prostitution; causing a child to view or listen to sexual activity; causing child to expose or exposing genitals or pubic area to a child; emotional damage; physical injury; or threats to engage in this conduct.

**Who can file?** A victim of child abuse or the parent, stepparent, legal guardian, or guardian ad litem of a victim. A few additional individuals can petition in a proceeding brought under Wis. Stat. §48.13 (child in need of protection or services).

**Against whom can the CARO be granted?** Any person, child or adult, who engages in child abuse. A claim of emotional damage can be brought against a parent, guardian, or legal custodian who has neglected, refused, or been unable to ameliorate those symptoms for reasons other than poverty.

**Remedies:** A respondent can be ordered to avoid the victim's residence and avoid contacting or causing any person to contact the victim (with a few narrow exceptions). The injunction can be granted for up to two years or until the child reaches 18, whichever is first. If a CARO is granted, firearms surrender is mandatory. A CARO may also set or restrict visitation rights, if the respondent is the parent of the child victim.

### **INDIVIDUAL AT RISK RESTRAINING ORDER (IARRO)**

Grounds for obtaining an IARRO include but are not limited to: sexual abuse; physical abuse; emotional abuse; treatment without consent; unreasonable confinement or restraint; financial exploitation; neglect; harassment; or stalking of an individual at risk. A petitioner can also request a non-interference provision when there's interference with: an investigation of an individual at risk; the delivery of protective services to an individual at risk; the delivery of protective placement; or the delivery of services to an individual at risk and the interference complained of, if continued, would make it difficult to determine whether any type of abuse or neglect has occurred.

**Who can file?** An individual at risk (IAR), defined as an adult at risk or an elder at risk. An adult at risk is any adult who has a physical or mental condition that substantially impairs his or her ability to care for his or her needs and who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation. An elder at risk is any person 60 or older who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation. Others who can file include any person acting on behalf of an IAR, an elder adult-at-risk agency or an adult-at-risk agency. If the petition is filed by a person other than the IAR, the petitioner shall serve a copy of the petition on the IAR and a guardian ad litem must be appointed by the court to represent the IAR.

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**Against whom can the IARRO be filed?** Any person who engages in abuse, financial exploitation, neglect, harassment, or stalking of an IAR. The non-interference provision can also be filed against any person who interferes with an IAR as listed above.

**Remedies:** The respondent can be ordered to cease engaging in or threatening to engage in the abuse, harassment, or stalking of an IAR; cease the mistreatment of an animal; avoid the residence of the IAR; avoid contacting or causing any person to contact the IAR; or engage in any other appropriate remedy not inconsistent with the remedies requested in the petition. Non-interference provision: the respondent can be ordered to cease the interfering conduct. The IARRO may be granted for up to four years.

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WCASA is a membership agency comprised of organizations and individuals working to end sexual violence in Wisconsin. Among these are the 56 sexual assault service provider (SASP) agencies throughout the state that offer support, advocacy and information to victims of sexual assault and their families. For information sheets on other topics and for more information about sexual assault, please visit our website. This sheet may be reproduced in its original format only.

**This information does not constitute legal advice.**

**Please note that this is an abridged information sheet; the statutes have not been printed in their entirety due to space restrictions.**