

## WISCONSIN'S INDIVIDUAL-AT-RISK RESTRAINING ORDER: AN ANALYSIS OF THE FIRST THIRTY MONTHS

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*Elders and people with disabilities often find themselves victims of abuse, neglect, and exploitation. Recognizing the breadth of this problem, Wisconsin legislators amended state statutes on restraining orders to help protect these populations from individuals*

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who might harm them. This Article presents a research study analyzing and demonstrating the effectiveness of the Wisconsin law in protecting elders and people with disabilities. In particular, this study looks into the atypical provisions in the Wisconsin law allowing a person other than the individual at risk to file a petition for restraining order and permitting the petition to be filed to enjoin financial exploitation, emotional abuse, and mistreatment of animals. While noting the many successes and benefits brought about by the individual-at-risk restraining order, this Article also addresses the challenges in its implementation, including performance of guardians ad litem, judicial understanding of the law, and enforcement. Consequently, the authors make several recommendations to strengthen the law and improve practice.

## I. Introduction

Abuse against elders and younger adults at risk is a multi-faceted problem. Types of abuse<sup>1</sup> against elders and younger adults at risk include physical abuse, sexual abuse, financial exploitation, neglect, and emotional or psychological abuse.<sup>2</sup> Factors that can put elders at risk may include the presence of dementia, decades of isolation,<sup>3</sup> a shredded safety net, or lack of awareness that the abuse is occurring (e.g., financial exploitation). While studies indicate that in most cases of elder abuse the abuser is dependent on the victim,<sup>4</sup> if the abused person receives care from the abuser, the

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1. In this Article, the term "abuse" is used to encompass the varying forms unless otherwise indicated.

2. For definitions of the forms of abuse listed, see *Major Types of Elder Abuse*, NAT'L CENTER ON ELDER ABUSE, [http://www.ncea.aoa.gov/NCEARoot/Main\\_Site/FAQ/Basic/Types\\_Of\\_Abuse.aspx](http://www.ncea.aoa.gov/NCEARoot/Main_Site/FAQ/Basic/Types_Of_Abuse.aspx) (last visited Nov. 9, 2010). For a better understanding of violence against individuals with disabilities, see ACCESSING SAFETY INITIATIVE, <http://www.accessingsafety.org> (last visited Nov. 9, 2010).

3. Betsy J. Abramson, Bonnie Brandl, Tess E. Meuer & Jane Raymond, *Isolation as a Domestic Violence Tactic in Later Life Cases: What Attorneys Need to Know*, 3 NAT'L ACAD. ELDER L. ATT'YS 47, 49-50 (2007).

4. Jan R. Greenberg, Martha McKibben & Jane A. Raymond, *Dependent Adult Children and Elder Abuse*, 2 J. ELDER ABUSE & NEGLECT 73, 74 (1990); Mark S. Lachs & Karl Pillemer, *Elder Abuse*, 364 LANCET 1263, 1265 (2004); Marta Lundy & Susan F. Grossman, *Elder Abuse: Spouse/Intimate Partner Abuse and Family Violence Among Elders*, 16 J. ELDER ABUSE & NEGLECT 85, 89 (2004); Karl Pillemer & David Finkelhor, *Causes of Elder Abuse: Caregiver Stress Versus Problem Relatives*, 59 AM. J. ORTHOPSYCHIATRY 179, 180 (1989); Rosalie S. Wolf & Karl A. Pillemer, *The Older Battered Woman: Wives and Mothers Compared*, 3 J. MENTAL HEALTH & AGING 325, 330 (1997).

victim may believe there is no alternative to continuing the abusive relationship.<sup>5</sup>

For some victims with disabilities, the abuser may be the victim's intimate partner, parent, or child, as well as the primary caregiver.<sup>6</sup> Patterns of abuse include depriving the individual of needed drugs, personal hygiene care, or transport to essential medical appointments. The abuser may withhold financial support or confiscate funds belonging to the victim.<sup>7</sup> For each disability type, different dynamics of abuse can come into play. For example, individuals with physical disabilities may be unable to physically escape violent situations while those with hearing impairments may be able to physically escape but be prevented from accessing remedies due to communication barriers.<sup>8</sup>

People with disabilities and older individuals who are victims of abuse may be reluctant to pursue legal remedies or seek help for the same reasons as other victims of domestic violence (e.g., fear of retaliation, embarrassment, shame, isolation, concerns for family privacy, or belief that the abuse is their own fault).<sup>9</sup> They may be reluctant to press charges against abusive family members or caregivers, because they do not want to get the person in trouble.<sup>10</sup> Some elders or younger adults at risk may fear that involving adult protective services (APS) or law enforcement with their problems will lead to involuntary services, appointment of a surrogate decision-maker, or removal from the home and placement in a nursing home or other re-

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5. A domestic violence victim may be dependent on the abuser for money, health care, transportation, or housing. "A threat involving the loss of any of these may be just as effective as a threat of physical violence." Tamara L. Kuennen, *Analyzing the Impact of Coercion on Domestic Violence Victims: How Much is too Much?*, 22 BERKELEY J. GENDER L. & JUST. 2, 15 (2007).

6. Stephanie Cooper, *Mentally Ill or Cognitively Impaired Patients, in EMERGENCY CARE OF THE ABUSED* 150, 154 (Fiona E. Gallahue & Laura D. Melville eds., 2008).

7. S. E. Smith, *Cycles Are Hard To Break: Disability and Domestic Violence*, FWD/FORWARD (Jan. 7, 2010), <http://disabledfeminists.com/2010/01/07/cycles-are-hard-to-break-disability-and-domestic-violence/> (last visited Nov. 9, 2010).

8. Margaret Nosek & Carol Howland, *Abuse and Women with Disabilities*, VAWNET, 3 (Feb. 1998), [http://new.vawnet.org/Assoc\\_files\\_vawnet/AR\\_disab.pdf](http://new.vawnet.org/Assoc_files_vawnet/AR_disab.pdf).

9. See Bridget Penhale, *Older Women, Domestic Violence, and Elder Abuse: A Review of Commonalities, Differences, and Shared Approaches*, 15 J. ELDER ABUSE & NEGLECT 163, 172 (2003).

10. Bonnie Brandl & Jane A. Raymond, *Unrecognized Elder Abuse Victims: Older Abused Women*, 6 J. CASE MGMT. 62, 64 (Summer 1997).

strictive setting.<sup>11</sup> They may also, with reason, fear that APS or court intervention will not prevent further abuse or retaliation.<sup>12</sup>

Researchers have considered a variety of interventions designed to identify and protect individuals at risk for abuse or neglect.<sup>13</sup> The initiatives utilized with younger battered women have been helpful in designing an intervention framework.<sup>14</sup> The need for expanded legal remedies for abuse of adults at risk has become evident as APS, domestic violence advocates, law enforcement, and other professionals recognize that traditional protective services do not prevent or fully respond to abuse of vulnerable adults.<sup>15</sup>

Wisconsin has been recognized as a leader in working with older victims of family violence for more than twenty years.<sup>16</sup> Since the mid-1990s, Wisconsin has established itself as a state with collaborative programming addressing domestic and sexual violence against people with disabilities.<sup>17</sup> To accomplish this work, policy-

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11. Lori A. Stiegel, *What Can Courts Do About Elder Abuse?*, 35 *JUDGES' J.*, Fall 1996, at 38, 42.

12. *Id.*

13. NAT'L RESEARCH COUNCIL, *ELDER MISTREATMENT: ABUSE, NEGLECT, AND EXPLOITATION IN AN AGING AMERICA 18-25* (Richard J. Bonnie & Robert B. Wallace eds., 2003).

14. Lundy & Grossman, *supra* note 4, at 96; Nosek & Howland, *supra* note 8, at 1-3.

15. Stiegel, *supra* note 11, at 39.

16. In 1988, one of this Article's authors, Jane Raymond, as a staff member with the Wisconsin Department of Health and Family Services (DHFS) Bureau on Aging, initiated the first of several projects with the DHFS Bureau on Children, Youth and Families, and the Wisconsin Coalition Against Domestic Violence (WCADV) to address the needs of older battered women. See Betsy J. Abramson & Jane A. Raymond, *Landmark Reforms Signed into Law: Guardianship and Adult Protective Services*, 79 *WIS. LAWYER*, Aug. 2006, available at [http://www.wisbar.org/AM/Template.cfm?Section=Wisconsin\\_Lawyer&template=/CM/ContentDisplay.cfm&contentid=59778](http://www.wisbar.org/AM/Template.cfm?Section=Wisconsin_Lawyer&template=/CM/ContentDisplay.cfm&contentid=59778).

17. In 1996, WCADV and the Wisconsin Council on Developmental Disabilities (WCDD) created a partnership to address the abuse of people with developmental disabilities. Howard Mandeville & Maria Hanson, *Understanding Caregiver Abuse as Domestic Violence: Systemic Change in Wisconsin*, *IMPACT*, available at <http://ici.umn.edu/products/impact/133/prof1.html>. Since 2003, through a federal grant funded through the U.S. Department of Justice Office on Violence Against Women, Disability Rights Wisconsin (the state's federally-designated advocacy and protection agency) has collaborated with the WCADV and the Wisconsin Coalition Against Sexual Assault to address domestic and sexual violence against women with disabilities and blind/deaf women. See Howard Mandeville, *Creating a Partnership to End Abuse Against People with Developmental Disorders*, *WISCONSIN COALITION AGAINST DOMESTIC VIOLENCE* (Wisc. Coal. Against Domestic Violence, Madison, Wis.), Winter 1999, at 24, available at <http://www.wcadv.org/?go=download&id=15>; see also *Community Profile: Wis-*

makers and advocates partnered with professionals from the criminal and civil justice systems to develop statutory language reflecting best practices grounded in an understanding of the unique issues facing people with disabilities and older individuals who are victims of violence.<sup>18</sup>

Like most states' laws on adult protective services, which were written in the 1970s, Wisconsin's laws were crafted in response to assumptions that loving individuals caused harm to others as a result of "caregiver stress" or lack of consumer knowledge.<sup>19</sup> Wisconsin's experience, informed by subsequent research, concluded that a significant percentage of cases of abuse and neglect of elders and vulnerable adults arise not from "caregiver stress" but rather from the same types of family violence and power and control dynamics that exist in domestic violence situations.<sup>20</sup> These factors were traditionally thought applicable only to situations involving younger nondisabled populations.<sup>21</sup> Based on the later research, Wisconsin revised its laws to reflect the traditional social services model, establish a criminal justice system response to address victim safety, and hold abusers accountable.<sup>22</sup>

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*consin*, ACCESSING SAFETY, [http://www.accessingsafety.org/index.php/main/right\\_menu/community\\_profiles/2006\\_grantee\\_communities/wisconsin-multiple-locations-draft](http://www.accessingsafety.org/index.php/main/right_menu/community_profiles/2006_grantee_communities/wisconsin-multiple-locations-draft) (last visited Nov. 9, 2010) (noting Disability Rights Wisconsin, Wisconsin Coalition Against Domestic Violence, and Wisconsin Coalition Against Sexual Assault collaborated in the mid-2000s to spearhead the Violence Against Women with Disabilities and Deaf Women Project).

18. Anne Seymour & Melissa Hook, *Victimization of the Elderly*, in NATIONAL VICTIM ASSISTANCE ACADEMY TEXTBOOK (Anne Seymour et al. eds., 2002), available at [http://www.ncjrs.gov/ovc\\_archives/nvaa2002/chapter14.html](http://www.ncjrs.gov/ovc_archives/nvaa2002/chapter14.html).

19. Pillemer & Finkelhor, *supra* note 4, at 179-80.

20. Lachs & Pillemer, *supra* note 4, at 1263; Pillemer & Finkelhor, *supra* note 4, at 180; Myrna Reis & Daphne Nahmiash, *Validation of the Indicators of Abuse (IOA) Screen*, 38 GERONTOLOGIST 471, 471-79 (1998); Wolf & Pillemer, *supra* note 4, at 326.

21. Bonnie S. Fisher & Sandra L. Regan, *The Extent and Frequency of Abuse in the Lives of Older Women and Their Relationship with Health Outcomes*, 46 GERONTOLOGIST 200, 208 (2006); Sarah Harris, *For Better or for Worse: Spouse Abuse Grown Old*, 8 J. ELDER ABUSE & NEGLECT, 1-33 (1996); Penhale, *supra* note 9, at 175; Linda R. Phillips, *Domestic Violence and Aging Women*, 21 GERIATRIC NURSING 188, 191 (2000); Terri Whittaker, *Violence, Gender and Elder Abuse: Towards a Feminist Analysis and Practice*, in GENDER VIOLENCE: INTERDISCIPLINARY PERSPECTIVES 276, 278-83 (Laura L. O'Toole et al. eds., 2007); Judith Cockram, *Silent Voices: Women with Disabilities and Family and Domestic Violence*, WOMEN WITH DISABILITIES AUSTRALIA (2003), <http://www.wvda.org.au/silent1.htm>.

22. Patricia Brownell & Agata Wolden, *Elder Abuse Intervention Strategies: Social Service or Criminal Justice?*, 40 J. GERONTOLOGICAL SOC. WORK 83-100 (2002), reprinted in *OLDER PEOPLE AND THEIR CAREGIVERS ACROSS THE SPECTRUM OF CARE* (Judith L. Howe ed., 2003); Joye Whatley, *Violence Against Women with Disabilities:*

Since December 2006, Wisconsin's adult protective services statutes have identified categories of individuals who may be considered an individual at risk. They include both "elder adults at risk" and "adults at risk," collectively referred to under the statute as "individuals at risk."<sup>23</sup> While Wisconsin operates three systems—elder adults at risk, adults at risk, and adult protective services—this Article refers to "individuals at risk," which will be modified throughout this Article to distinguish between elder individuals at risk (age sixty and older) and younger individuals at risk (between the ages of eighteen and fifty-nine). Most states consider all of these individuals to be adult protective services clients.

As part of Wisconsin's 2006 reform efforts to better respond to cases of domestic violence against individuals at risk, Wisconsin enacted an individual-at-risk restraining order.<sup>24</sup> Wisconsin developed this legal tool to address the unique situations faced by individuals at risk.<sup>25</sup>

In 2008, as the new restraining order approached the two-year anniversary of its effective date, policymakers and advocates were interested in determining the extent of awareness, use, and value of the order. Thus, we embarked on this research project anticipating that by gathering data and conducting interviews with individuals who sought the individual-at-risk restraining order, relevant counsel, judges, and other court personnel, we could determine the value of the statutory tool and any revisions needed in the law or its imple-

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*Policy Implications of What We Don't Know*, 13, IMPACT (Inst. on Cmty. Integration, Minneapolis, Minn.), Fall 2000, at 4-5, available at <http://www.ici.umn.edu/products/impact/133/133.pdf>.

23. An "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." WIS. STAT. § 46.90(1)(br) (2007). 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 who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, or financial exploitation." *Id.* § 55.01(1e).

24. Wisconsin uses the terms "restraining order" for temporary orders and "injunctions" for permanent orders; other states use terms such as "orders of protection." See, e.g., MINN. STAT. ANN. § 518B.01(4) (2006); 750 ILL. COMP. STAT. 60/103(12) (2009).

25. "The use of legal sanctions such as injunctions for older people to prevent or alleviate abusive situations is an important corollary to this." Penhale, *supra* note 9, at 174. "[P]ersons with disabilities who are dependent on caregivers, either at home or in institutions, may need special legal protection against abuse." Nosek & Howland, *supra* note 8, at 3.

mentation. As a result of our study, we have developed recommendations for changes in the law and best practices to address problems and increase the statute's utility as a tool to enhance the safety of individuals at risk. This research can help policymakers in Wisconsin by identifying issues related to the law's implementation and recommendations for improvements. It may also be useful to advocates in other states who may be interested in seeing a comparable law enacted in their jurisdiction.

## II. History of the Wisconsin Individual-at-Risk Restraining Order

Beginning in 2001, the Wisconsin Department of Health and Family Services<sup>26</sup> embarked on an ambitious effort to reform its adult protective services system. As part of the massive overhaul, the Department formed a small workgroup to analyze and make recommendations related to restraining orders for "vulnerable adults."<sup>27</sup> The workgroup consisted of domestic violence, sexual assault, disability, and elder advocates, as well as both state and county APS staff.

Five sets of problems with the then-existing restraining orders were identified: (1) an extremely narrow definition of "vulnerable adult," (2) limitations in the relationship or living arrangement required between victim and abuser, (3) limitations in the abusive behaviors that could be restrained, (4) restrictions on who could petition for the restraining order, and (5) the remedies available.<sup>28</sup>

First, the former APS law used the term "vulnerable adult," defined as a person who has developmental disabilities, infirmities of aging, mental illness, or other like incapacities and who is either substantially mentally incapable of providing for his or her needs for food, shelter, clothing, personal or health care or is unable to report if

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26. In 2008, the agency was renamed the Wisconsin Department of Health Services. STATE OF WIS. LEGIS. AUDIT BUREAU, BIENNIAL REPORT, at 17 (2009), available at <http://www.legis.wisconsin.gov/lab/reports/09-BiennialReport.pdf>.

27. A listing of work group members, meeting notes, and background materials are available from this Article's co-author, Betsy Abramson. Additional legislative drafting materials are available in the drafting file of 2005 Act 388, at the WISCONSIN LEGISLATIVE REFERENCE BUREAU, <http://www.legis.state.wi.us/lrb/index.htm>.

28. WISCONSIN LEGISLATIVE REFERENCE BUREAU, <http://www.legis.state.wi.us/lrb/index.htm>

he or she is abused or neglected.<sup>29</sup> This definition of vulnerable adult required membership in one of the four defined categorical disability groups listed above and included a relatively stringent functional requirement that the person be unable to meet his or her own needs.<sup>30</sup> It also effectively narrowed the population of younger individuals with disabilities and elders who could obtain the restraining order yet needed the same protections afforded to those defined as “vulnerable.”<sup>31</sup>

Second, under Wisconsin’s then-existing domestic abuse restraining order law, only abusers in an intimate relationship with the victim—abusers who were currently or had previously lived with the victim or those who had a child in common with the victim—could be restrained.<sup>32</sup> Victims whose abusers were caregivers or who were abused by someone other than someone with whom they were intimate (e.g., grandchildren) were not protected by these orders.

Third, none of the then-existing restraining orders addressed the tactics commonly used by individuals who abused older adults and those with disabilities—financial exploitation, emotional abuse, and mistreatment of animals.<sup>33</sup>

Fourth, the only individuals who could petition for a vulnerable adult restraining order were the vulnerable adult, a court-appointed

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29. WIS. STAT. § 55.01(7) (2004) (repealed 2006); WIS. STAT. § 940.285(1)(e) (2004) (repealed 2006).

30. ROY FROEMMING, DEP’T OF HEALTH & SERV., CHAPTER 55 APPLICATION OF WISCONSIN ADULT PROTECTIVE SERVICES LAW AND ADULTS-AT-RISK PROTECTIVE RELATED STATUTES 7 (Oct. 2007), available at <http://www.dhs.wisconsin.gov/aps/training/Chapter55/chapter55manual.pdf>.

31. One of the conceptual problems here is the artificial duality imposed when persons are classified into the either/or categories of independent or dependent beings. Sheila M. Neysmith, *Power in Relationships of Trust: A Feminist Analysis of Elder Abuse*, in ABUSE AND NEGLECT OF OLDER CANADIANS: STRATEGIES FOR CHANGE 43, 51 (Michael J. MacLean ed., 1995).

32. WIS. STAT. § 813.12(1)(a) (2001). During the time of this proposal’s development, domestic violence advocates successfully persuaded the Wisconsin legislature to amend the statute to include caregivers as individuals against whom the domestic abuse restraining order could be sought. WIS. STAT. § 813.12(1)(a) (2007).

33. Batterers who also abuse their pets are both more controlling and use more dangerous forms of violence (sexual violence, marital rape, emotional violence, and stalking) than batterers who do not. Catherine A. Simmons & Peter Lehmann, *Exploring the Link Between Pet Abuse and Controlling Behaviors in Violent Relationships*, 22 J. INTERPERSONAL VIOLENCE 1211, 1218 (2007). See also Tess Meuer, *Using Restraining Orders to Protect Elder Victims*, WIS. LAWYER, Sept. 2000, at 38, 41, available at [http://www.wisbar.org/AM/Template.cfm?Section=Wisconsin\\_Lawyer&template=/CM/ContentDisplay.cfm&contentid=49212](http://www.wisbar.org/AM/Template.cfm?Section=Wisconsin_Lawyer&template=/CM/ContentDisplay.cfm&contentid=49212) (listing definitions of types of abuse previously covered by statute).



guardian for the vulnerable adult, or a county adult protective services agency.<sup>34</sup> The workgroup recognized that in designing a restraining order specific to individuals at risk, the persons who could petition for a restraining order needed to be expanded. Group members recognized that an individual at risk often did not realize abuse was occurring, or the individual did not or could not seek a restraining order due to isolation, diminished competency, or other above-listed reason. The group also identified many situations involving individuals at risk under guardianship in which it was the guardian who was either perpetrating the abuse or unwilling or unable to intervene to stop abuse by others.

Accordingly, the workgroup wanted to permit others to pursue this restraining order “on behalf of” individuals at risk. They were concerned, however, about the need to ensure the rights of an individual at risk if that individual objected to the request for a restraining order. Thus, recognizing the philosophical shift from victim-directed self-advocacy to another person being able to pursue the restraining order on an adult’s behalf, the workgroup recommended two important protections. If someone other than the individual at risk were to be permitted to file the petition for the temporary restraining order: (1) the petitioner must provide notice of the petition to the individual at risk, and (2) the court must appoint a guardian ad litem<sup>35</sup> to investigate the situation and report to the court as to whether issuance of the restraining order would be in the best interests of the individual at risk.

Finally, the workgroup found the remedies available under the then-existing restraining orders too limited. At the time of the reform effort, Wisconsin had four restraining orders—child abuse, harassment, domestic abuse, and vulnerable adults.<sup>36</sup> Unlike the first three,

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34. WIS. STAT. § 813.123 (2003).

35. In Wisconsin, a guardian ad litem (GAL) must be an attorney. WIS. STAT. § 54.40(2) (2007–08). Unlike attorneys acting in other roles, GALs do not represent actual clients but rather carry out the concept of “representing the best interests” of legally incompetent persons or other persons who need their interests protected. Hannah C. Dugan, *Ethics 2000: Proposed Rule Creates GAL Conduct Standard*, WIS. LAWYER, Dec. 2004, at 40, 41, available at [http://www.wisbar.org/AM/Template.cfm?Section=Wisconsin\\_Lawyer&template=/CM/ContentDisplay.cfm&contentid=37512](http://www.wisbar.org/AM/Template.cfm?Section=Wisconsin_Lawyer&template=/CM/ContentDisplay.cfm&contentid=37512).

36. Domestic Abuse Restraining Order, WIS. STAT. § 813.12 (2003); Child Abuse Restraining Order, WIS. STAT. § 813.122, (2003); Vulnerable Adults Restraining

however, the vulnerable adult restraining order did not provide a no-contact (stay away) order.<sup>37</sup> Rather, the vulnerable adult restraining order was a “non-interference” order, available only to prevent someone from interfering with a county’s investigation or delivery of protective services. The group, therefore, recommended that the non-interference provisions be retained in law but transferred to the adult protective services provisions; they also recommended and designed a true no-contact order, which is the focus of this research.

The individual-at-risk restraining order became law in Wisconsin on December 1, 2006, with all of the recommendations proposed by the workgroup noted above.<sup>38</sup> The narrow definition of “vulnerable adult” was replaced with the new definition of “individual at risk.”<sup>39</sup> Limitations on the type of relationship required between abuser and victim were eliminated.<sup>40</sup> Enjoinable actions were expanded and now include interfering with the investigation or provision of services, actions or threats to engage in physical abuse, sexual abuse, emotional abuse, treatment without consent, unreasonable confinement, financial exploitation, neglect, harassment, stalking of an individual at risk, and mistreating the animal of an individual at risk.<sup>41</sup> As discussed above, the limitation on who could petition was removed and protections were developed for situations in which someone other than the individual at risk acted as the petitioner.<sup>42</sup> Finally, traditional “no-contact” remedies were included.<sup>43</sup>

### III. Study Methodology

This research project was undertaken to evaluate whether the restraining order has been used as intended in situations of abuse,

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ing Order, WIS. STAT. § 813.123 (2003); Harassment Restraining Order, WIS. STAT. § 813.125 (2003).

37. Meuer, *supra* note 33, at 40.

38. Wisconsin’s 2005 Assemb. B. 539 was signed into law as 2005 Act 388. 2005 Wis. Sess. Laws 27. The Individual-at-Risk restraining order is codified at WIS. STAT. § 813.123 (2007).

39. WIS. STAT. § 813.123 (2007) (replacing “vulnerable adult” in WIS. STAT. § 813.123 (2003)). See *supra* note 23.

40. WIS. STAT. § 813.123 (2007).

41. WIS. STAT. § 813.123(5)(a)(3) (2007). Definitions of the behaviors against which the restraining order may be sought are contained in WIS. STAT. § 46.90(1) (2007).

42. WIS. STAT. § 813.123 (2007).

43. See Meuer, *supra* note 33, at 40.

neglect, and exploitation of at risk individuals. Wisconsin's individual-at-risk restraining order is atypical, particularly its provision permitting someone other than the individual at risk to pursue it. This provision reflects a change in philosophy for domestic violence advocates, who historically have assisted in obtaining domestic abuse restraining orders only in situations in which the victim can and wants to petition. Thus, the research sought to specifically examine this provision and its impact on victim autonomy, safety, and well-being. In addition, it sought to determine any practical implementation challenges for the courts or individuals petitioning for the restraining order and its impact on victims.

Research for the project consisted of reviewing computerized aggregate data about the number of cases involving the individual-at-risk restraining order through Wisconsin's Circuit Court Access Project.<sup>44</sup> In addition, we electronically reviewed individual case files (total 327) to identify the petitioner, the relationship to respondent, the nature of actions sought to be restrained, whether an injunction was later issued, and other relevant information.

In addition to reviewing statewide data electronically, project staff reviewed in-depth court files (paper files) from eleven of Wisconsin's seventy-two counties and conducted semi-structured interviews. The interviews were conducted with Wisconsin Registers in Probate,<sup>45</sup> attorneys, domestic violence advocates, and elder abuse/APS workers who responded to listserv queries. In addition, project staff identified and interviewed key informants in counties where data showed significant experience. These included interviews with registers in probate and other court and county staff. In conducting the interviews, project staff developed and posed a standardized list of questions.<sup>46</sup> Given the uniqueness of each person's experiences, however, the resulting information was necessarily varied in nature, content, and depth.

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44. *Wisconsin Circuit Court Access*, WIS. COURT SYSTEM, <http://wcca.wicourts.gov/index.xsl> (last visited Nov. 9, 2010). This website (WCCA) provides access to certain public court filings from Wisconsin's circuit courts.

45. Wisconsin's probate offices process guardianships, conservatorships, protective placements, adoptions, and administration of decedents' estates, as well as restraining order filings. *See* WIS. STAT. §§ 48, 54, 55, 813, 851-52 (2007).

46. *See* app. A.

In the thirty months studied (December 1, 2006 through June 1, 2009), 327 individual-at-risk restraining order petitions were filed in fifty-four of Wisconsin's seventy-two counties. Almost one-half (158) of all petitions were filed in just ten counties,<sup>47</sup> reflecting a concentration of petitions filed by county social services agencies and victim advocates who were utilizing the new law's provisions on behalf of an individual at risk.

**Table 1**  
**Wisconsin Individual-at-Risk Restraining Order Court Filings**  
**(CCAP)**

**December 1, 2006–June 1, 2009**

	Filed by individual at risk	Filed by relative	Filed by county	Filed by other <sup>48</sup>
Petitions filed	150	72	60	39
TRO granted	134 (89.3%)	55 (76.4%)	59 (98.3%)	36 (92.3%)
Injunction granted	72 (53.7%) <sup>49</sup>	35 (63.6%)	38 (64.4%)	21 (58.3%)
Dismissed <sup>50</sup> after TRO granted	62 (46.2%)	20 (36.4%)	21 (35.6%)	15 (41.7%)

47. The counties included Wisconsin's larger metropolitan areas of Milwaukee (46), Dane (18), Rock (20), and Winnebago (10), as well as the more rural counties of Wood (22), Barron (17), Burnett (8), Clark (8), Walworth (8), and Washington (8). In Marathon County, one of Wisconsin's largest counties geographically, only two petitions were filed. Seven cases filed in Wood County involved the same parties.

48. "Other" is anyone who could not be determined to fit into the first three categories. The petition does not list the relationship between the petitioner and the individual at risk, making it impossible to determine the relationship of the petitioner to the victim in all cases.

49. This percentage represents the percentage of injunctions granted out of the number of cases where a temporary restraining order was granted.

50. Cases can be "dismissed" by courts for a variety of reasons, including: petitioner's request, petitioner's failure to effect service, petitioner's failure to appear at the hearing, or lack of merit. See *infra* Part IV.B.

A comprehensive review of the court filings indicates that almost one-half (150) of the petitions were filed by the individual at risk, occasionally with the assistance of a relative or county staff also named in the petition.<sup>51</sup> At least twenty-two percent (seventy-two) of the petitions were filed by a relative and at least nineteen percent (sixty) by a county social worker or Adult-at-Risk (AAR) agency staff.<sup>52</sup> The great majority of temporary restraining orders were granted (284) and in more than half of those cases a permanent injunction (order of protection) was granted after a temporary restraining order was obtained. Further analysis shows that about one-half of the petitions filed by an individual at risk or by a relative resulted in an injunction.

Petitions filed by county workers, primarily elder abuse/AAR staff, were successful more often than those filed by any other petitioner. This could be due to a number of factors. First, as part of their initial response to reports, county workers may petition for a temporary restraining order to remove a potential abuser from the home of an individual at risk. Second, county workers conduct and document their investigation prior to filing the petition, or at least prior to the injunction hearing, providing more and better evidence for the court's consideration. Finally, county workers often have the assistance of domestic violence, elder or disability advocates, or attorneys who are experienced with and knowledgeable about both the requirements for an effective petition and the court process.

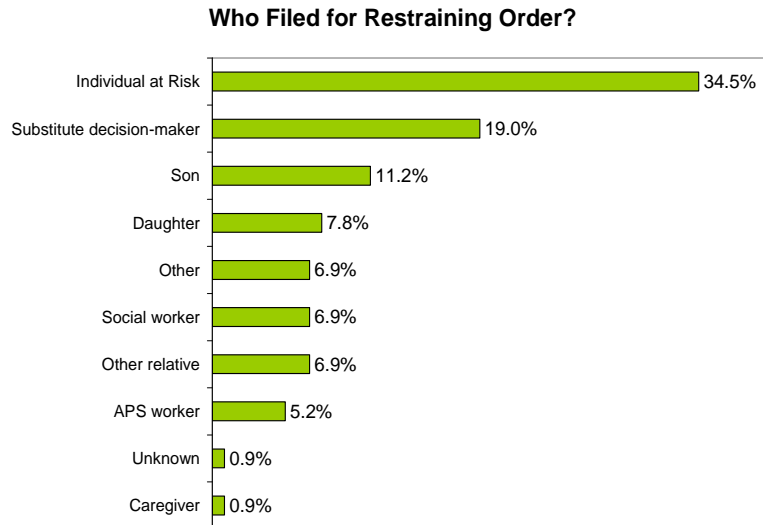
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51. Petitioners may be assisted in the Individual-at-Risk Restraining Order process by another individual, but unless that person providing assistance is also named in the petition, there is no record in the court file.

52. The researchers were unable to determine the relationship or status of the petitioner in every case.

**Table 2**

**Wisconsin Individual-at-Risk Restraining Order  
11 County File Review - December 1, 2006–June 1, 2009**



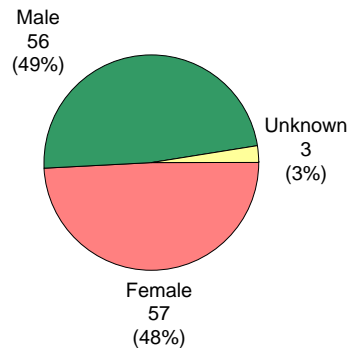
Of the 116 petitions filed, seventy-six, which represents nearly two-thirds, were filed by someone other than the individual at risk.<sup>53</sup> Of those seventy-six filed by others, twenty-two (twenty-nine percent) were filed by a legally appointed substitute decision-maker (i.e., agents under activated powers of attorney or court-appointed guardians).<sup>54</sup> Also, while county departments of social services or APS units were only named as the petitioner in eighteen cases, interviewees noted that they often assisted other petitioners as well. While sixty-two percent of all individuals at risk who were the subject of a petition were female, almost eighty percent of individuals at risk who filed a petition themselves were female. Thus, another family member, guardian, or social services worker was more likely to file on behalf of male victims.

53. Seven additional cases were identified through interviews with four social workers and one guardian ad litem.

54. Some of these agents or guardians were also sons, daughters, and other relatives, but they are counted here in their legal role, where it exists.

In this study, men and women were alleged to be abusers in roughly equal numbers. This may be because of the high number of cases in our research involving financial exploitation, which studies show male and female relatives perpetrate in equal numbers.<sup>55</sup> This is different from most studies of domestic violence in all age segments of society, which indicate that the perpetrators who come to the attention of the criminal justice system are overwhelmingly male.<sup>56</sup> Similarly, most studies of elder abuse also have found that the majority of perpetrators are male.<sup>57</sup>

**Chart 1**  
**Gender: Alleged Abusers**



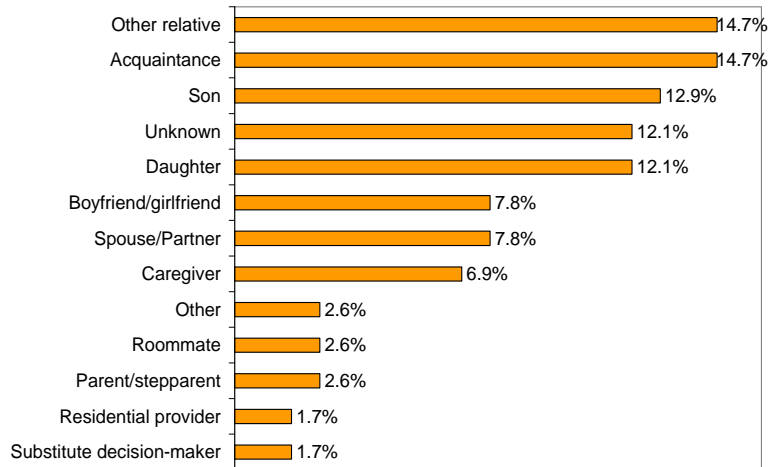
55. METLIFE MATURE MKT. INST. ET AL., BROKEN TRUST: ELDERS, FAMILY, AND FINANCES 12-15 (Mar. 2009), <http://www.metlife.com/assets/cao/mmi/publications/studies/mmi-study-broken-trust-elders-family-finances.pdf>.

56. ANDREW R. KLEIN, U.S. DEP'T OF JUSTICE, PRACTICAL IMPLICATIONS OF CURRENT DOMESTIC VIOLENCE RESEARCH: FOR LAW ENFORCEMENT, PROSECUTORS AND JUDGES 13 (June 2009), available at <http://www.ncjrs.gov/pdffiles1/nij/225722.pdf>.

57. BONNIE BRANDL ET AL., ELDER ABUSE DETECTION AND INTERVENTION, A COLLABORATIVE APPROACH 22 (Sheri W. Sussman et al. eds., 2007).

**Chart 2**

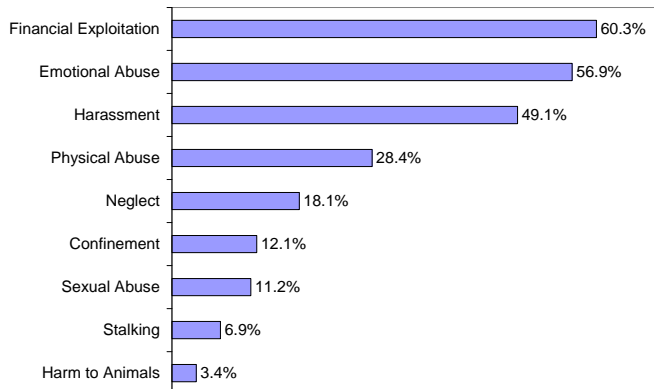
**Alleged Abuser’s Relationship to the Individual at Risk**



In the 116 cases reviewed, alleged abusers were most commonly “other relatives” and acquaintances, although sons and daughters also ranked high among alleged abusers. Interestingly, spouses, partners, boyfriends, and girlfriends were less likely to be alleged abusers. Again, this may be a function of the high prevalence of financial exploitation relative to other kinds of abuse and neglect.

**Chart 3**

**Types of Abuse/Neglect/Exploitation**





In Wisconsin, the petition for an individual-at-risk restraining order contains check boxes where the petitioner indicates the type or types of abuse alleged.<sup>58</sup> The most common forms of abuse alleged, either separately or in various combinations, were financial exploitation, emotional abuse, and harassment. Of the 116 court files that were individually reviewed, seventy-three percent included allegations of more than one type of abuse. The largest share alleged financial exploitation (sixty percent) and emotional abuse (fifty-seven percent).<sup>59</sup> In addition, forty-nine percent alleged harassment, twenty-eight percent alleged physical abuse, eighteen percent alleged neglect, twelve percent alleged confinement, and eleven percent alleged sexual abuse. Stalking, treatment without consent, unreasonable confinement, and mistreatment of an animal also were alleged, but much less frequently. It is important to note that prior to enactment of the individual-at-risk restraining order, financial exploitation, emotional abuse, mistreatment of animals, treatment without consent, and unreasonable confinement were not grounds for issuance of a restraining order.<sup>60</sup>

Financial exploitation was the type of abuse most often alleged when only one type of abuse was alleged (eighteen out of twenty-five cases, or seventy-two percent). In the fifty-seven cases in which three or more types of abuse were alleged, the most common types alleged were emotional abuse (eighty-eight percent), harassment (seventy-two percent), and financial exploitation (sixty-seven percent).

While in some cases both the individual at risk and another person, such as a relative or guardian, were identified as joint petitioners, in many cases we could not determine from the file whether assistance was provided. We also intended to see how frequently the individual-at-risk restraining order was sought on behalf of younger indi-

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58. See Petition for Temporary Restraining Order and/or Petition and Motion for Injunctive Hearing, available at [www.wicourts.gov/forms/cv-428.DOC](http://www.wicourts.gov/forms/cv-428.DOC).

59. Allegations of emotional abuse, however, were often used to strengthen the petition, rather than as the sole basis.

60. See Meuer, *supra* note 33, at 39 (noting that Wisconsin's restraining order laws were intended to be used by younger victims and that elderly victims subject to financial exploitation, for example, may not have been eligible for a restraining order). See also Abramson & Raymond, *supra* note 16.

viduals at risk (individuals age eighteen to fifty-nine years). However, data collected did not allow for an age distinction.<sup>61</sup>

#### IV. Discussion

##### A. Successes

One of the greatest impacts as well as challenges affecting the success of the restraining orders is the role of county social workers or an APS agency in pursuing the order. In general, APS may only provide services with the consent of the alleged victim.<sup>62</sup> This is because competent adults are presumed to be independent and able to make decisions about their safety and living conditions. Under certain circumstances, however, APS may be authorized to provide victim services without the alleged victim's consent and notwithstanding the alleged victim's explicit objection.<sup>63</sup> Any actions taken against the individual at risk's preferences must be based on the belief that the relationship is so dangerous or harmful to the individual that it overrides the individual's right to live life as he or she chooses.<sup>64</sup>

Interviews with county social workers confirmed that they take these restraining orders very seriously, and workers exercise multiple roles depending on the level of involvement needed. If the individual at risk is able to petition on his or her own behalf, a social worker often provides assistance in completing the petition and will often provide testimony at the injunction hearing. If the individual at risk does not appear able or willing to petition on his or her own behalf, social workers concerned about the current or potential risk of the individual at risk will attempt to involve family or will petition themselves. In

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61. Further study of age distinction and victim autonomy is recommended but will require a different methodology.

62. See Lisa Nerenberg, *Communities Respond to Elder Abuse*, in *ELDER ABUSE AND MISTREATMENT: POLICY, PRACTICE AND RESEARCH* 5, 11-12 (M. Joanna Mellor & Patricia Brownell eds., 2006) (discussing exceptions to the general rule that APS services are voluntary in nature).

63. *Analysis of State Adult Protective Services Laws, Emergency or Involuntary Services to Victims*, NAT'L CENTER ON ELDER ABUSE (July 29, 2008, 3:08 PM) [http://www.ncea.aoa.gov/NCEARoot/Main\\_Site/Find\\_Help/APS/Analysis\\_State\\_Laws.aspx](http://www.ncea.aoa.gov/NCEARoot/Main_Site/Find_Help/APS/Analysis_State_Laws.aspx) (last visited Nov. 23, 2010) (stating that many state APS laws grant authority to APS professionals to intervene in special circumstances, even without explicit consent from the victim).

64. See, e.g., IND. CODE § 12-10-3-23 (2007); N.J. STAT. ANN. § 52:27D-414 (2010); WIS. STAT. § 55.12 (2008).

these situations, the social worker takes on the petitioner's burden to prove the necessity for a restraining order.

Balancing the individual at risk's autonomy with the societal interest in his or her protection can be difficult. The injunction can result in ethical dilemmas, particularly in cases in which someone other than the individual at risk seeks the restraining order. One such example is a case in which the individual at risk's guardian, who was also her sister, obtained an injunction against the individual at risk's boyfriend after he broke her arm and punched her in the face.<sup>65</sup> Both the guardian and the guardian ad litem requested that the court continue the injunction despite the individual at risk having requested dismissal. Based on the best interests of the individual at risk, the court ordered that the injunction remain in place.

Wisconsin's individual-at-risk restraining order has been successfully used to address behaviors that were not previously available under the existing domestic violence restraining order. While emotional abuse and mistreatment of animals were valuable additions to the types of abuse that can be enjoined, the key statutory addition is clearly financial exploitation. In the first two years, this has been a primary area of abuse from which petitioners have obtained injunctive relief (fifty-seven percent). In many cases financial exploitation can be more easily documented, particularly when large sums of money are involved.<sup>66</sup> This documentation most likely contributed to the success of these petitions. Many petitioners were able to produce copies of bank statements, checks, and credit card or utility bills showing from hundreds to tens of thousands of dollars being misappropriated from the individual at risk.

An example of the value of the statute's provision allowing the investigation of potential financial exploitation was demonstrated in a case in which it enabled one county worker to establish a course of conduct upon which to base multiple petitions against a young

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65. The cases mentioned in this Article were reviewed from Wisconsin's CCAP system (*see supra* note 44). Due to concerns about victim confidentiality and safety, reference to specific case numbers or case names are not provided here. For further information about this case or other cases subsequently described in this Article, please contact the authors.

66. *See* Thomas J. Murphy, FINANCIAL EXPLOITATION OF THE ELDERLY: ELEMENTS AND REMEDIES 4, 24 (Apr. 19, 2007), available at [http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=thomas\\_murphy](http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=thomas_murphy).

woman who was serving as representative payee for many elderly neighbors. The injunctions prohibited the woman from continuing in that capacity after she had cashed checks, taken money for her own use, failed to keep an accounting of her expenditures, and failed to pay the elders' bills.

In another case, an elderly woman hired a man to do some work on her house. When the man began the work, the woman found out that he was living in his work van. Seeing herself as a "good Christian woman," she allowed him to stay on her couch. For the next six years she housed him, purchased his clothing, gave him money to work on her home, and bought him a new van. She told the judge that she always believed that the next check she wrote would be the one that would "get him on his feet," and he would then leave. He forbade her from having friends in her home. He isolated her so effectively that she could not tell her family about the situation. After six years, she was finally able to confide in her nephew, who then petitioned for a restraining order. The police removed the man from the woman's house. The woman stayed with friends for the two weeks it took to get the permanent injunction. The handyman's actions cost the elderly woman over \$100,000.

Some attorneys have made effective use of the injunction process to safeguard the finances of an elder individual at risk. In one instance, family members were concerned about the financial exploitation by one man's daughter whom they believed responsible for draining the individual at risk's bank accounts. Their attorney obtained a temporary restraining order that immediately stopped the daughter's financial exploitation of the individual at risk pending a guardianship hearing. The temporary restraining order prohibited her from controlling her father's finances and health decisions until a guardian was appointed to exercise these fiduciary responsibilities, thus ending a pattern of theft and fraud perpetrated by the daughter.

In several cases, guardians successfully obtained restraining orders against a boyfriend or girlfriend who was financially exploiting an individual at risk. In one particular instance, the guardian, a former foster parent, observed that a friend staying with the younger individual at risk was spending her money, selling her personal property, and attempting to get the individual at risk to pass bad checks. An injunction ended the exploitation. In another case, a guardian filed a petition on behalf of an elderly individual at risk to enjoin a

female acquaintance from committing acts of prostitution from the elder's apartment. The acquaintance had stolen money, incurred excessive phone bills, and allowed into the apartment alleged gang members who were dealing drugs and carrying weapons.

While it is more difficult to document instances in which a relative or caregiver steals twenty dollars from an individual at risk's wallet than it is to produce copies of checks and bank statements, petitioners have been successful when coupling such types of allegations with those of emotional abuse, harassment, or physical abuse. Many of these cases involved a parent and adult child or grandchild. For example, a ninety-three-year-old woman obtained an injunction against her grandson for demanding money, as well as for physical and verbal abuse while he was high on drugs. He also stole cash and food and threatened to kill his grandmother. In another situation, the grandson went to his grandmother's house demanding money and threatened to place her in a nursing home or to commit violence against her if she did not give him her money. He alternated between forcing her to write him checks and driving her to the bank to get him cash. A social worker recognized the problem and the woman agreed to pursue the restraining order, since she was afraid of the grandson and did not want the situation to continue.

In addition to financial exploitation, incidents of physical or emotional abuse may also lead a victim to apply for a restraining order. In one instance, an elderly woman's son and daughter-in-law rented an apartment from her that was adjacent to her residence. The son became violent after using drugs or alcohol and increased the violence after she called the police. In another case, a son who drank excessively lived with his mother and became emotionally abusive and threatening to her when drunk. He also threatened her visitors by releasing his dog, which growled, snarled, and attacked people. Injunctions were obtained in both instances, thus protecting the older mothers from continued abuse. Other cases were filed by guardians against residents of group homes or nursing homes who engaged in physical violence or threats of physical violence towards individuals at risk.

Another area of success is the addition of mistreatment of an individual at risk's animal as grounds for a restraining order.<sup>67</sup> Abuse

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67. WIS. STAT. § 813.123 (2007).

of animals can be documented either by veterinarians or by witnesses and can support claims of emotional abuse that otherwise may be difficult to prove.<sup>68</sup> While only appearing in a few cases, the claim appeared to strengthen the petitions. In one instance, a man who was living with an individual at risk repeatedly snapped the necks of her cats to force her to write checks payable to him. In another, a man beat an older woman's cat with a broomstick to threaten her into silence about ongoing abuse. The woman was severely injured when she fell while trying to stop the abuse. The cat was later euthanized because of the seizures it suffered from the abuse.

There also has been success in obtaining restraining orders when an abuser obstructs a health care provider's access to an individual at risk or interferes with needed care. Courts have issued restraining orders against abusers who stole an individual at risk's medication, treated the individual at risk without consent, or denied the individual at risk access to medication. In one case, an individual at risk with terminal cancer was rarely conscious and had no knowledge of his surroundings. The hospice worker repeatedly found the patient's morphine missing. The individual at risk was moved from his girlfriend's "care" into a hospice facility. Once in the facility, a hospice worker went into the room after the girlfriend had been visiting, found the morphine intravenous (IV) drip disconnected and draining onto the floor, and the individual at risk in great pain. The staff found the girlfriend in the parking lot overdosed on morphine. The restraining order denied her further access to him.

In another instance, a daughter living with her mother did not allow the mother's home health care workers into the house. The restraining order removed the daughter from the house, and although she was allowed to contact her mother, she was enjoined from interfering with her care. In yet another case, a caregiver withheld the individual at risk's lithium for days and then administered large doses of the drug so that the caregiver could go out drinking and leave the individual unattended for hours at a time. The individual at risk told her daughter who successfully filed for an injunction.

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68. See NAT'L CTR. ON ELDER ABUSE, *Elder Abuse and Animal Cruelty*, VERMONT ANIMAL CRUELTY TASK FORCE (2003), <http://www.vactf.org/pdfs/elder-ac.pdf>.

**B. Denial of Injunctions**

A total of 145 petitions were denied or dismissed. Petitioners in twenty-three cases voluntarily terminated the action by reaching a stipulation with the respondent. In three cases, the petitioner failed to appear in court. In seven cases, the individual-at-risk petitioners withdrew the petition. In four cases, the court specifically held that either the petition or the case failed to meet the statutory requirements (e.g., either the threat did not rise to the level necessary for an injunction or the subject individual did not meet the definition of an individual at risk). In three of the cases reviewed, the individual at risk died before the injunction hearing and in three others, guardianship proceedings or orders to review the performance of an agent under a power of attorney replaced the injunction process. In the remaining cases (102), the basis for denying an injunction was unclear from the court file.

As with many pro se filings, some petitioners failed to recognize what was required in the court proceeding, such as producing witnesses, introducing evidence beyond their own testimony, and showing more than an isolated incident to satisfy the statutory requirements for a permanent injunction. Some petitioners did not understand when the individual at risk's testimony was needed at the hearing. The cases that did not result in an injunction may reflect both this lack of understanding of the process as well as the difficult emotional issues involved that lead to voluntary or stipulated dismissals.

In addition, social workers sometimes failed to utilize available resources that would ensure a successful petition. One social worker filed multiple petitions that were all dismissed for lack of service because the social worker neglected to check the box that would have required the sheriff to serve the respondent. In another instance, a social worker provided a brief (two-to-three sentence) description of the potential abuse, which fell far short of the necessary proof to obtain a temporary restraining order.

**C. Lack of Understanding and Misapplication of the Statute**

While not widespread, some cases were dismissed for reasons that reflected a judge's misunderstanding of the statute or the dynamics underscoring the need for these orders. For example, in the counties in which individual files were reviewed, a few judges failed to

understand that persons other than the individual at risk could petition for an injunction on the individual's behalf, regardless of competency. In one Wisconsin county, twenty-one cases were filed, thirteen of which involved the same individual at risk who was subjected to financial exploitation by female acquaintances. In some cases, the judge evidenced a paternalistic attitude and outmoded understanding of domestic violence with potentially dangerous consequences. For example, one judge gave the parties a "cooling off" period instead of an injunction. In another case the judge cautioned a son "not to upset" his mother and dismissed the petition. Still another case was dismissed on the condition that the respondent stays away from the individual at risk's group home. These problems, more fully described below, demonstrate the need for further judicial education.<sup>69</sup>

**1. CONFUSION ABOUT RELEVANCE OF INDIVIDUAL AT RISK'S CAPACITY AND WHO MAY PETITION**

The statute allows any person acting on behalf of an individual at risk to file the petition without regard to the individual at risk's capacity. In some counties in which case files were reviewed, however, it appeared that judges erred by denying petitions because they determined: (1) the subject individual was competent; (2) the victim had a guardian, but the guardian was not the petitioner; (3) the victim had executed a power of attorney and the agent was not the petitioner; or (4) the victim had executed a power of attorney that was not yet effective (activated). Under the law, however, an individual at risk's mental capacity or the existence or status of a guardian or power of attorney is irrelevant to the decision to issue an injunction if, after hearing, the judge finds reasonable cause to believe that the respondent has engaged or threatened to engage in the abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk.<sup>70</sup>

An example of this type of judicial error was demonstrated in a case in which an adult son petitioned for a restraining order against the girlfriend of his elderly father, who required nursing home care. The girlfriend had disrupted the father's participation in nursing

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69. See NAT'L COUNCIL JUV. & FAM. CT. JUDGES, A GUIDE FOR EFFECTIVE ISSUANCE & ENFORCEMENT OF PROTECTION ORDERS 55-60 (2005), available at [http://www.ncjfcj.org/images/stories/dept/fvd/pdf/burgundy\\_book\\_final.pdf](http://www.ncjfcj.org/images/stories/dept/fvd/pdf/burgundy_book_final.pdf).

70. WIS. STAT. § 813.123(5) (2007).



home activities and removed him from the premises without permission. The judge incorrectly dismissed the petition stating that the son, whom the father had previously appointed as agent under his Power of Attorney for Health Care, did not have the authority to file a petition on behalf of the individual at risk, because his father was competent. In another case, the dismissal sheet prepared after the hearing noted that the petitioner, the individual at risk's sister, was "not the guardian for [the individual at risk]." Again, the statute does not limit who may file a petition on behalf of an individual at risk.

## 2. FAILURE TO APPOINT A GUARDIAN AD LITEM

In some cases, guardians ad litem were not appointed, although required by the statute when someone other than the individual at risk files the petition.<sup>71</sup> The statute also permits the court to order the appointment of a guardian ad litem in any other instance "when justice so requires."<sup>72</sup> As noted earlier, under Wisconsin law, a guardian ad litem must be an attorney and represent the "best interests" of the individual for whom he or she is appointed.<sup>73</sup> Fully one-third (twenty out of sixty) of all petitions filed by the counties did not have a guardian ad litem appointed. Similarly, one-third (twenty-four out of seventy-two) of petitions filed by relatives of the individual at risk or someone who falls into the "other" category also had no guardian ad litem appointed.

## 3. DENIAL OF PETITION SOLELY BECAUSE INDIVIDUAL AT RISK DID NOT TESTIFY

In another case, a father filed for an injunction against the girlfriend of his adult son, an individual with developmental disabilities for whom he was the guardian. The court denied the injunction because only the guardian testified, and there was no testimony from the individual at risk. While testimony from an individual at risk can be of great value at a hearing, such testimony is not statutorily required for a court to find reasonable cause to believe that the respondent has engaged or threatened to engage in the abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk.

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71. WIS. STAT. § 813.123(3)(b) (2007).

72. *Id.*

73. WIS. SUP. CT. R. 20:4.5.

#### D. Guardian ad Litem's Failure to Perform Duties

As indicated above, in Wisconsin a guardian ad litem must act as an advocate for the "best interests" of the individual at risk rather than represent the individual at risk's preferences.<sup>74</sup> The guardian ad litem's duty in these cases is to investigate the situation and report to the court whether it is in the individual at risk's best interest for the restraining order to be granted. Interview respondents, however, described cases in which, even though the guardian ad litem was properly appointed, his or her involvement in the case did not fulfill the expectations of advocates, social workers, or petitioners involved.<sup>75</sup> Some reported that the guardian ad litem only met with the individual at risk for a few minutes in the hall before the injunction hearing. Limited involvement by the guardian ad litem may cause additional anxiety and conflict in an already stressful situation for both the petitioner and the individual at risk. However, the greater failure is the court's inability to obtain knowledge as to whether issuance of the restraining order would be in the best interests of the individual at risk.

#### E. Enforcement

In situations in which the individual at risk has dementia or he or she is unable to recognize what is going on around them, who will call the police to report a violation? One case that demonstrates the severity of the problem involved a grandson who had been stealing his terminally ill grandmother's pain medication. An injunction was

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74. *Id.* [N]o counterpart rule exists in the ABA Model Rules, on which the Wisconsin rules are based. Despite the GAL's critical role in the court system—to serve in a special court-appointed capacity as 'the eyes and the ears' of the court—this role is only mentioned in the most recent ABA Model Rules and, therefore, now in some states' rules. Unlike attorneys acting in other roles, GALs do not represent actual clients but rather carry out the concept of 'representing the best interests' of legally incompetent persons or other persons who need their interests protected. . . . A GAL does not represent the government or a family member or even the legally or alleged incompetent person [i.e., in these cases, the individual at risk]. Indeed, because no client is represented, the committee intentionally placed proposed rule 4.5 in subchapter IV of Chapter 20, entitled "Transactions with Persons Other than Clients."

Dugan, *supra* note 35, at 41.

75. Dates and other details about these and all interviews referenced in this Article are available from and on file with the authors.

ordered and a copy of the injunction was entered in the hospital record prior to placing her in the intensive care unit (ICU). Nevertheless, the grandson visited his grandmother, and hospital staff found him pulling off her pain patches. The hospital called the police, and the injunction was belatedly enforced. This case demonstrates that even though the petitioners provided a copy of the injunction to care providers to ensure their awareness of the order's existence and terms, petitioners must understand that the injunction is not self-executing.<sup>76</sup> Therefore, individuals to whom petitioners provide a copy of the injunction (e.g., financial institutions, care providers) must be told explicitly how and when to seek its enforcement.

## F. Statutory Omissions

### 1. LACK OF FIREARMS SURRENDER

Unlike Wisconsin's domestic abuse and child abuse injunctions, there are no provisions requiring automatic firearm surrender within the individual-at-risk restraining order.<sup>77</sup> In one instance, an individual at risk requested that the individual-at-risk restraining order be converted to a harassment restraining order, presumably believing that a firearm restriction was not available under the individual-at-risk restraining order. In another instance, having in place the firearm restriction would possibly have saved an individual at risk from further abuse. The individual at risk was a young woman with significant challenges regarding cognition but functioning successfully. She called a local domestic violence shelter and reported being physically and sexually abused by a man and kept isolated in a bedroom for days at a time without food or water. A domestic violence advocate assisted the woman in obtaining an injunction, but the man returned and took her away at gunpoint. She eventually escaped again and contacted the police, but the advocate believed that without a weapon the man would not have been able to overpower the individual at risk.

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76. Policies and protocols must be seamless in order to effectively protect victims of domestic violence. See Nerenberg, *supra* note 63, at 9–10.

77. WIS. STAT. §§ 813.12, 813.122 (2007).

## 2. RESPONSIBILITY FOR GUARDIAN AD LITEM FEES

In cases in which someone other than the individual at risk files the petition, the court must appoint a guardian ad litem to investigate the situation. The court may also appoint a guardian ad litem when anyone asks for such an appointment or the court on its own determines that "justice so requires."<sup>78</sup> While there are no fees associated with the filing of a petition for an individual-at-risk restraining order, there are no provisions regarding payment of guardian ad litem fees. In many cases, the county human services agency absorbs the costs.<sup>79</sup> However, it is also quite possible the cost will be charged to the individual at risk. In the absence of any other provision for payment, Wisconsin law states that guardian ad litem fees are paid by the individual whose interests the guardian ad litem is appointed to represent.<sup>80</sup>

In one instance a grandson was providing full-time care for his elderly grandmother, an individual at risk with multiple sclerosis. The individual at risk's son was released from jail and decided to take over that role. He dismissed the grandson (his son) as caregiver but failed to provide needed care. A county social worker assisted the grandson in filing for a restraining order to remove his father due to the neglect, and it was granted. The young man ultimately quit his job to care for his grandmother full-time. He later received a \$600 guardian ad litem bill that he was unable to pay.

## V. Recommendations

Based on the research described in this Article, including data analysis, interpretation of the qualitative interviews conducted, and statutory review, the authors offer recommendations that can be divided into three categories. The first set of recommendations addresses the need for training on the issues of abuse of individuals at risk, this type of restraining order, other relevant law, and best practices. Professionals who could benefit from training are judges, guardians ad litem, elder abuse/adults-at-risk workers, domestic violence advocates, elder law attorneys, and advocates. The second set of recommendations addresses resource development. Finally, the third set

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78. WIS. STAT. § 813.123(3)(b).

79. See WIS. STAT. § 757.48(1)(b).

80. WIS. STAT. § 757.48(2).

NUMBER 2

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of recommendations proposes statutory changes to address issues where Wisconsin statutes are silent or confusing.

## **A. Training**

### **1. JUDICIARY**

Judges and court personnel would benefit from education on the substance of the individual-at-risk restraining order. Key elements to be highlighted in training include: (1) individuals other than the individual at risk may file a petition, regardless of the individual at risk's competency or any existing adjudications of incompetency; and (2) judges must appoint a guardian ad litem when a person other than the individual at risk files the petition, and it is discretionary in other cases.

In addition, judges should be reminded of the responsibility of a petitioner to provide notice of the petition to the individual at risk. Judges could further benefit from education about the dynamics of abuse against elders and other adults at risk, including physical abuse, sexual abuse, financial exploitation, emotional abuse, and abuse of pets. Training should include information about the role of county elder abuse/adults-at-risk staff, additional conditions that can be placed on restraining orders (e.g., surrender of firearms, supervised contact), and alerting petitioners and individuals at risk of their right to seek enforcement of injunctions. Finally, judges should be informed of ways to ensure access to the court for individuals at risk who might require reasonable accommodations.

### **2. GUARDIANS AD LITEM**

Wisconsin has continuing legal education requirements for guardians ad litem of adults regarding issues of guardianship, mental commitment, and adult protective services.<sup>81</sup> Education in this area should focus on the following: the statutory provisions and the role of guardians ad litem in individual-at-risk restraining orders; investigation techniques; how to communicate with adults with disabilities, including cognitive conditions; ethical issues in serving as a guardian ad litem in these cases; understanding the dynamics of abuse, com-

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81. WIS. SUP. CT. R. 36.03. Note that Wisconsin also requires separate continuing legal education for GALs in cases involving minors. WIS. SUP. CT. R. 35.01.

munity resources, and remedies for abuse against elders and other adults at risk; medications and potential side-effects; medical conditions that impact mental capacity; how county social services are organized; the role of law enforcement; and advocacy skills. The training should emphasize the importance of meeting with the individual at risk as early as possible, as well as interviewing the petitioner to determine whether the petitioner has the individual at risk's best interests in mind or whether the petition was filed for inappropriate reasons.

### 3. ELDER ABUSE/ADULTS-AT-RISK WORKERS

Elder abuse/adults-at-risk workers could benefit from education emphasizing the value of the individual-at-risk restraining order as a tool and training to help determine when to involve law enforcement instead of, or in addition to, pursuing a restraining order. For example, under Wisconsin law, law enforcement is required to comply with any requests by county workers to accompany them in responding to reports of abuse (e.g., when workers are concerned about their own safety or when workers believe access to individuals at risk may be blocked). Law enforcement's involvement may assist workers in conducting the necessary investigation to form the basis of an individual-at-risk restraining order petition.<sup>82</sup> They would also benefit from learning that they do not have to use their own names as petitioner when requesting an individual-at-risk restraining order and the importance of providing a copy of any court-issued order to the individual at risk's care providers or financial institutions, as appropriate. These workers could learn a great deal from domestic violence advocates about court processes for obtaining orders and procedures for enforcement, given advocates' long history with protective orders. In addition, workers should learn how to address safety concerns (e.g., when an abuser ignores the conditions of the injunction) as part of care plans. While ensuring safety, the workers should also learn to balance safety concerns with the individual at risk's right to autonomy.<sup>83</sup> Specialized topic areas addressing dementia and disability-related issues for individuals at risk should also be included.

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82. WIS. STAT. §§ 46.90(5)(c), 55.043(2)(a) (2008 & Supp. 2009-10).

83. "While it is wrong to assume that every person with a disability is able to make all decisions independently, it is also wrong to assume that because she has

#### 4. DOMESTIC VIOLENCE ADVOCATES

The dynamics of abuse against elders and younger individuals at risk can be similar to domestic violence but is, at times, unique. Expanding advocates' understanding of abuse, neglect, and exploitation used against individuals at risk could be of value when documenting the behaviors for which an injunction is sought.<sup>84</sup> Understanding why an advocate may need to assist someone other than the individual at risk in obtaining the restraining order requires accepting that a victim's choices cannot always be made by the victim. Knowing the checks and balances outlined in the statutes would help ensure that advocates assist others to file only in appropriate situations. Domestic violence legal advocates would benefit from training on how to work with other professionals, especially elder abuse and adult protective services workers, to complete the required forms and assist victims in communicating with law enforcement.<sup>85</sup> Most importantly, given the possibility that an abuser may violate the conditions of an injunction and put the individual at greater risk, domestic violence advocates should learn how to assist in the development of safety plans for individuals at risk that reflect and respond to the unique issues and circumstances faced by these individuals.

#### 5. ELDER LAW ATTORNEYS

Elder law attorneys would greatly benefit from education about the existence and substance of the individual-at-risk restraining order, particularly in preventing or mitigating financial exploitation. They should also be made aware of the value of obtaining an individual-at-risk restraining order while awaiting a guardianship petition;

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a disability she is incapable of learning to make any." VIOLENCE AGAINST WOMEN WITH DISABILITIES PROJECT, CROSS TRAINING WORKBOOK: WORKING TOGETHER TO END VIOLENCE AGAINST WOMEN WITH DISABILITIES IN WISCONSIN 31 (2004), available at <http://www.wwda.org.au/wisconsin1.pdf>.

84. See *Abuse in Later Life Power and Control Wheels*, NAT'L CLEARINGHOUSE ON ABUSE IN LATER LIFE, [http://www.ncall.us/docs/Later\\_Life\\_PCWheel.pdf](http://www.ncall.us/docs/Later_Life_PCWheel.pdf) (last visited on Nov. 9, 2010); *Abuse of People with Developmental Disabilities Power and Control Wheel*, NAT'L CLEARINGHOUSE ON ABUSE IN LATER LIFE, [http://www.ncall.us/docs/P&C\\_Wheel\\_Disabilities.pdf](http://www.ncall.us/docs/P&C_Wheel_Disabilities.pdf) (last visited on Nov. 9, 2010).

85. LAURIE E. POWERS & MARY OSCHWALD, VIOLENCE AND ABUSE AGAINST PEOPLE WITH DISABILITIES: EXPERIENCES, BARRIERS AND PREVENTION STRATEGIES 14-16 (2004), available at <http://www.directcareclearinghouse.org/download/AbuseandViolenceBrief%203-7-04.pdf>.

and the fact that the restraining order can be pursued by agencies with which the attorneys work, including county elder abuse and adults-at-risk agencies. They would also benefit from learning how to help family members petition for restraining orders, ethical issues when counseling family members to pursue restraining orders on behalf of current or former clients,<sup>86</sup> and how to ensure that the orders are enforced.

#### 6. LAW ENFORCEMENT

Abusive situations can be challenging for law enforcement, since they often involve repetitive abuse by the same individuals against the same victims.<sup>87</sup> In Wisconsin, law enforcement officers are generally well trained in intervening in domestic violence situations, albeit with younger victims. While the goal remains the same (i.e., to ensure the safety of the victim and the accountability of the perpetrator), the educational challenge for law enforcement is their understanding of the unique dynamics presented when responding to a violation of an individual-at-risk restraining order, as well as enforcement of the order's terms. Understanding the factors contributing to violence against individuals at risk, including the underlying theories, would assist police officers who are called upon to respond to abuse situations or to enforce either restraining orders or injunctions. Law enforcement could also direct victims and other potential petitioners to agencies (e.g., domestic violence program, elder abuse/adults-at-risk agency) that can provide assistance in completing and filing the petition.

#### B. Development of Resource Materials

More resource materials related to the individual-at-risk restraining order should be developed. First, all professionals identified above would benefit from an easy-to-understand description (e.g., Frequently Asked Questions) explaining the restraining order process and differences between these and other restraining orders, especially

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86. WIS. SUP. CT. R. 20:1.6, 20:1.14.

87. Rana Sampson, *Domestic Violence*, PROBLEM-ORIENTED GUIDES FOR POLICE PROBLEM-SPECIFIC GUIDES SERIES No. 45 (Jan. 2007), at 1, available at [www.cops.usdoj.gov/files/RIC/Publications/e12061550.pdf](http://www.cops.usdoj.gov/files/RIC/Publications/e12061550.pdf).



the individual-at-risk restraining order's unique provision permitting someone other than the individual at risk to file.<sup>88</sup>

Second, petitioners need a checklist to guide them through the completion of the petition, the procedures required for service, and in court proceedings, as well as examples that could provide guidance in specific situations. Linking resource materials to state court and circuit court websites could provide explanations and guidance to those who are considering the restraining order process. Links to the Wisconsin Coalition Against Domestic Violence and adults-at-risk or elder abuse websites are other tools that could be utilized to educate the public. An additional tool for petitioners who rely on visual communication could be developed that would depict the process and checklist through pictures or other alternative formats more amenable to the individual at risk's learning method.

Third, judges would benefit from a judicial bench book that includes the following: a description of the differences between this restraining order and the others available under Wisconsin statutes, a checklist of the petition's requirements, a list of the requirements of service, a description of how to question the petitioner and individual at risk, and reminders to petitioners and individuals at risk regarding the availability of law enforcement assistance in enforcing the restraining order. This bench tool should also include sample language for specific orders such as visitation, removal of possessions, and supervision.<sup>89</sup>

### C. Statutory Changes

#### 1. SURRENDER OF FIREARMS

There is some debate as to whether a mandatory or discretionary firearms restriction should be included in the law. Some advocates believe that some individuals at risk would be less likely to use the

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88. See app. B. (containing sample Frequently Asked Questions and answers explaining the restraining order process and the individual-at-risk restraining order).

89. For example, "Visitation can occur on Thanksgiving Day from 4:00-7:00 PM, at niece's home while dessert is being served," or "At a time certain (insert) collect possessions from Mrs. X's home," or "You have until November 30 to provide an inventory of items," or "Your mother will collect said items and you may remove them with accompaniment by local law enforcement, no later than December 15."

restraining order should there be a firearms restriction, fearing, for example, that removing an abuser's hunting rifles could make the situation worse. Others believe a firearms restriction can cause judges to not grant protective orders.<sup>90</sup>

If a judge issuing a harassment injunction in Wisconsin determines, based on clear and convincing evidence presented at the hearing, that the respondent may use a firearm to cause physical harm to the victim, the judge may prohibit the respondent from possessing a firearm.<sup>91</sup> Because of the concerns associated with a mandated firearms restriction, yet acknowledging the dangers that firearms can present, we recommend that surrender of firearms be similarly included in both the statute and listed on the court form as a specific option under "Other." Doing so will remind judges that they may order the restriction when deemed appropriate.

## 2. RESPONSIBILITY FOR GUARDIAN AD LITEM FEES

As noted above, guardian ad litem are appointed whenever someone other than the individual at risk files the petition and in other cases when justice so requires. Assigning responsibility for payment of guardian ad litem fees to the petitioner can result in disincentives for pursuing these protections. If the individual at risk files the petition and the court orders appointment of a guardian ad litem, doing so should not result in the individual at risk paying those fees. The restraining order is a safety tool; charging the victim for the cost of protection compromises those protections. Therefore, as is the practice in many Wisconsin counties whenever child abuse restraining orders are filed, the county should absorb the cost of the guardian ad litem fees. This would ensure victims do not face economic barriers in accessing protection from the courts.

## VI. Conclusion

Intimidation, exploitation, and abuse can be directed at victims of all ages and can be extremely devastating. In the first two years since its enactment, Wisconsin's individual-at-risk restraining order has proven to be a valuable tool in precisely the situations its crafters

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90. Lisa D. May, *The Backfiring of the Domestic Violence Firearms Bans*, 14 COLUM. J. GENDER & L. 1, 3 (2005).

91. WIS. STAT. § 813.125(4m)(a) (2007).

had envisioned. The study results confirm that a specialized legal mechanism addressing the unique forms of domestic violence perpetrated against individuals at risk plays a critical role in protecting these individuals from abuse, neglect, and exploitation. The tool's distinct features have been especially valuable for individuals at risk who are not legally incompetent but are still vulnerable and in need of protection due to fear, coercion, threats, or their own frailty. Clearly, inclusion of two additional behaviors for which a restraining order can be sought—financial exploitation and emotional abuse—are particularly significant in situations involving individuals at risk. In addition, the unusual feature of permitting someone other than the individual at risk, a guardian, or an APS agency, to file the restraining order has proven critical in many cases. The statutory, training, and best practices recommendations outlined above will all assist in further improving this law and will strengthen Wisconsin's safety net for adults at risk. Furthermore, we anticipate that the Wisconsin statute, experiences, and recommendations will be a useful guide to advocates in other states who may be interested in seeing a comparable law enacted in their jurisdiction.

## Appendix A

### Questions Posed of Interviewees Regarding: Wisconsin's Individual-at-Risk Restraining Order

1. Name of person interviewed
2. Contact information
3. Position/profession and agency/firm
4. What are some non-identifying details about the individual at risk?
  - a. Age
  - b. Nature of disabilities
  - c. Had the individual at risk been declared incompetent?
  - d. Was there a guardian?
  - e. Was there an activated Power of Attorney? (Health care or financial or both)?
5. Who contacted you?
  - a. Individual at risk?
  - b. If not the individual at risk, what was the contact's relationship to the individual at risk?
  - c. What was the contact's relationship to the perpetrator?
6. If it wasn't the individual at risk who contacted you, why did you decide to proceed?
7. Why did you choose this restraining order over the others?
8. What was the relationship between the individual at risk and the perpetrator?
9. What was the nature of the behavior you were seeking the order to restrain?
10. Did the victim want the restraining order, not want it, or was he or she incapable of indicating?
11. If he or she did not want the restraining order, what made you decide to proceed?
12. In the situations where it wasn't the victim petitioning, what did the guardian ad litem (GAL) do?
13. Has this changed the role of the GAL?
14. Who filled out the paperwork for the injunction/temporary restraining order (TRO)?
15. Was there a hearing?
  - a. How was the hearing different from others for a TRO?
  - b. Did the individual at risk attend the hearing?
  - c. Was the TRO granted or denied?

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- d. Why?
16. Did the issuance of the TRO “work” in stopping the behavior?
    - a. If so, all the behavior or some?
    - b. If not, what behavior continued, what was the problem?
  17. Did you later get an injunction?
  18. Where the individual at risk (victim) was not the petitioner seeking the TRO, what was his or her reaction? How was the individual at risk’s relationship with the perpetrator affected?
  19. What was there about the law that caused you to have success that you may not have had without it, or when compared to other restraining orders?
  20. Are there problems with the law that need fixing to address a situation such as the one you dealt with?
  21. Are there problems with the law that leave some situations un-addressed?
  22. Would you use this TRO for similar/other situations in the future?

## Appendix B

### Individual-at-Risk Restraining Order WIS. STAT. § 813.123 (2007-08)

#### Frequently Asked Questions

**1. What is an individual-at-risk restraining order?** A court commissioner or judge issues a restraining order or injunction to prevent another person from hurting (through physical abuse, sexual abuse, emotional abuse, neglect, treatment without consent, or unreasonable confinement) or financially exploiting an individual at risk.

Getting an injunction is a two-step process. First, a petitioner must obtain a temporary restraining order (“TRO”), which protects someone until a hearing occurs, usually within seven (7) days of the petition being filed. Second, after a hearing, a court commissioner or judge can order an **injunction, which can last up to four years**, to stop the abuser from harming the individual at risk or engaging in abusive conduct against the individual at risk.

**2. Who may petition for an individual-at-risk restraining order?**

- a. An individual at risk (See below for definitions of “adult at risk” and “elder adult 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. *NOTE: This law permits someone other than the individual at risk to pursue a restraining order. However, if someone other than the individual at risk seeks the restraining order: (1) that person must give a copy of the petition to the individual at risk; and (2) the court must appoint a guardian ad litem, a lawyer who independently investigates and reports to the court whether issuing the order is in the individual at risk's "best interests."*

*See* WIS. STAT. § 813.123(2)(a).

**3. What type of abuse must the petitioner allege to obtain a temporary restraining order or injunction?**

a. Abuse, financial exploitation, neglect, harassment or stalking of an individual at risk, or the mistreatment of an animal. *See definitions on page 3.*

b. That the abuser (respondent) has interfered with (or based upon prior conduct may interfere with) an investigation or delivery of protective services to the individual at risk and that the interference, 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.

*See* WIS. STAT. §§ 813.123(4)(a)2.a, 813.123(4)(a)2.b; WIS. STAT. §§ 55.05, 55.06, 46.90(5m).

**4. Where should the petitioner file the petition for an individual-at-risk restraining order?**

- a. The county where the abuse occurred; *or*
- b. The county where the abuser (respondent) resides.

*See* WIS. STAT. §§ 801.50(2)(a) and (2)(c).

**5. Are there fees associated with an individual-at-risk restraining order petition?**

- a. There is no cost to file the petition or for the sheriff's department to "serve" (personally deliver) the petition.
- b. In some counties the petitioner may be responsible for payment of the guardian ad litem fees. In other counties, the judge may order the county to pay these fees.

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See WIS. STAT. §§ 814.61(1)(d) and 814.70.

**6. What is “service”? When and how does it occur?**

a. Service is a legal term that means giving notice of a court hearing to another person. The restraining order petition must be “served on” (personally delivered to) the abuser (respondent). Service must occur before the hearing on the injunction.

b. The sheriff’s department will serve the restraining order forms if the petitioner checks the correct box on the petition form. Or, the petitioner can have another individual serve the forms on the abuser (respondent).

See WIS. STAT. § 813.123(5).

**7. What must a court find (i.e., determine or conclude) to order an injunction?**

a. If the individual at risk filed the petition: that all the allegations in the petition are true.

b. If someone other than the individual at risk filed the petition, all of the following:

1. That the allegations in the petition are true; *and*

2. That either the petitioner gave or the sheriff delivered a copy of the petition to the individual at risk.; *and*

3. That the court appointed a guardian ad litem for the individual at risk; *and*

4. That the guardian ad litem believes it is in the individual at risk’s best interests for the injunction to be issued; *and*

5. The court agrees with the guardian ad litem.

See WIS. STAT. §§ 813.123(4)(a) and (ar).

**8. What may a court order if it grants the petition?**

A court may order the abuser (respondent) to:

a. Stop 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.

- b. Stay away from the residence of the individual at risk or any other location temporarily occupied by the individual at risk or both.
- c. Not contact or have any person (other than a party's attorney or a law enforcement officer) contact the individual at risk (including in person, by telephone, e-mail, or any other means).
- d. Stop interfering with an investigation of the individual at risk or the delivery of protective services to the individual at risk.
- e. Any other appropriate remedy (e.g., firearms surrender).

See WIS. STAT. §§ 46.90(5m), 55.05, 55.06, and 813.123(4)(a) and (ar).

#### INDIVIDUAL-AT-RISK RESTRAINING ORDER PETITION DEFINITIONS

WIS. STAT. §§ 46.90(1) and 55.01.

**"Adult at risk"**—any adult 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, or financial exploitation.

**"Elder adult at risk"**—any person age sixty or older who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation.

**"Abuse"** includes:

**"Physical abuse"**—intentional or reckless infliction of bodily harm.

**"Emotional abuse"**—"Language or behavior that serves no legitimate purpose and is intended to be intimidating, humiliating, threatening, frightening, or otherwise harassing, and that does or reasonably could intimidate, humiliate, threaten, frighten, or otherwise harass the individual to whom the conduct or language is directed."

**"Sexual abuse"**—the violation of WIS. STAT. §§ 940.225(1), (2), (3), or (3m) (criminal sexual assault law), WIS. STAT. 46.90(1)(gd).

**"Treatment without consent"**—the administration of medication to an individual who has not provided informed consent, or the perfor-



mance of psychosurgery, electroconvulsive therapy, or experimental research on an individual who has not provided informed consent, with the knowledge that no lawful authority exists for the administration or performance.

**“Unreasonable confinement or restraint”** – the intentional and unreasonable confinement of an individual in a locked room, involuntary separation of an individual from his or her living area, use on an individual of physical restraining device, or the provision of unnecessary or excessive medication to an individual but does not include the use of these methods or devices in entities regulated by the department if the methods or devices are employed in conformance with state and federal standards governing confinement and restraint.

**“Financial exploitation”** – any of the following: (1) obtaining an individual’s money or property by deceiving or enticing the individual or by forcing, compelling, or coercing the individual to give, sell at less than fair market value, or in other ways convey money or property against his or her will without his or her informed consent; (2) theft under WIS. STAT. § 943.20; (3) the substantial failure or neglect of a fiscal agent to fulfill his or her responsibilities; (4) unauthorized use of an individual’s personal identifying information or documents, as prohibited in WIS. STAT. § 943.201; (5) unauthorized use of an entity’s identifying information or documents, per WIS. STAT. § 943.203; (6) forgery, per WIS. STAT. § 943.38; or (7) financial transaction card crimes, per WIS. STAT. § 943.41.

**“Neglect”** – the failure of a caregiver, as evidenced by an act, omission, or course of conduct, to endeavor to secure or maintain adequate care, services, or supervision for an individual, including food, clothing, shelter, or physical or mental health care, and creating significant risk or danger to the individual’s physical or mental health. “Neglect” does not include a decision that is made to not seek medical care for an individual, if that decision is consistent with the individual’s previously executed declaration or do-not-resuscitate order under WIS. STAT. ch. 154, a power of attorney for health care under WIS. STAT. ch. 155, or as otherwise authorized by law.