

APPENDIX B

Sexual Assault Protection Order (SAPO) Hearing Bench Card

- ✓ The **rules of evidence** need not be applied. ER 1101(c)(4)
http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=ER&ruleid=gaer1101, see p.12, Ch.9

- ✓ The respondent must be **personally served** at least 5 days prior to the hearing. If personal service has not been made, the court may continue the hearing for 14 days to require additional attempts at personal service, or the court may continue the hearing for 24 days if it authorizes **service by publication or mail**. The court shall not require the petitioner to make more than two attempts at obtaining personal service, unless the petitioner so requests. RCW 7.90.050
<http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.050> , 7.90.120(3)
<http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.120>, see p. 9, Ch. 9

- ✓ Evidence of a **petitioner’s prior sexual conduct or reputation** is admissible only as it relates to past sexual conduct of the petitioner with the respondent offered by the respondent upon the issue of whether the petitioner consented to the sexual conduct alleged and only upon a written offer of proof and an in camera hearing thereon. RCW 7.90.080
<http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.080> , ER 412
http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=ER&ruleid=gaer0412 , see p. 12, Ch. 9

- ✓ If the court finds by a **preponderance of the evidence** that the petitioner has been a victim of nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent, the court shall issue a sexual assault protection order. RCW 7.90.090(1)(a)
<http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.090> , see p. 13, Ch. 9

- ✓ The court **may not deny an order** due to: (1) the **minor status** of either party; (2) the petitioner’s **failure to report the assault** to law enforcement; (3) the **absence of proof of physical injury** to the victim; (4) the **voluntarily intoxication** of either party; or (5) the petitioner’s engagement in **limited consensual touching**. RCW 7.90.090
<http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.090> see p. 14, Ch. 9

- ✓ The court may order that a respondent under age 18 who attends the same school as the petitioner **transfer to another school** after weighing the safety of the petitioner against the burden on the respondent. RCW 7.90.090(3) see p.10, Ch. 9
- ✓ A final SAPO may be **granted for up to two years**. RCW 7.90.120(2) <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.120> see p. 3, Ch. 9
- ✓ **Mutual protection orders are disfavored** due to due process and enforcement concerns, see p. 19, Ch. 9
- ✓ A best practice is to **call uncontested SAPO hearings involving only default, dismissal or continuance at the beginning of the calendar** and to **schedule contested SAPO hearings at the end of the calendar**; see p. 15, Ch. 9
- ✓ The court should position the parties and assign court and security personnel in courtroom areas to **prevent contact between the parties**; see pp. 15, Ch. 9
- ✓ A **sexual assault advocate** must be allowed to accompany the victim to court. RCW 7.90.060 <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.060> ; see p. 17, Ch. 9
- ✓ If the respondent is represented, the court may **appoint an attorney for the petitioner**. RCW 7.90.070 <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.070> ; see p. 18, Ch. 9
- ✓ The court should **identify potential Fifth Amendment issues** by inquiring in every case whether there is a criminal charge or continuing criminal investigation and, if so, advising the respondent accordingly. See p. 16, Ch. 9