

APPENDIX B

Sexual Assault Protection Order (SAPO)

Hearing Bench Card

- ✓ The **rules of evidence** need not be applied, other than with respect to privileges, the requirements of the rape shield statute under RCW 9A.44.020, and evidence rules 412 and 413. RCW 7.105.200(8) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.200>; ER 1101(c)(4) https://www.courts.wa.gov/court_rules/pdf/ER/GA_ER_11_01_00.pdf.
- ✓ **Personal service** by law enforcement is required in cases requiring surrender of firearms, transferring the custody of a child/children from the respondent to the petitioner; vacating the respondent from the parties' shared residence; and when respondent is incarcerated. After two unsuccessful attempts at personal service, service by electronic means shall be permitted. RCW 7.105.150(1) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.150>
- ✓ **Service by electronic means**—email, text, social media, other technologies—must be prioritized for all orders except those listed above. Original service by electronic means must be effected by law enforcement unless the petitioner chooses to have the respondent served by a person who is not a party to the case, 18 years of age or older, and competent to be a witness, and can provide sworn proof of service to the court as required. Court authorization of electronic service not required except in cases where personal service initially required. RCW 7.105.150(1)(b) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.150>
- ✓ **Service by mail** is permitted when i) personal service required, there have been two unsuccessful attempts, and electronic service is not possible; or ii) personal service not required and there were two unsuccessful attempts at personal or electronic service. **Courts authorize by mail in the order upon seeing two unsuccessful attempts; a formal motion is not required.** RCW 7.105.150(c)
<https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.150>
- ✓ **Service by publication** is permitted only where all other means of service have been unsuccessful or are not possible. RCW 7.105.150(d)
<https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.150>
- ✓ Personal or electronic service must be made at least 5 days prior to the hearing. Service by mail or publication must be made at least 30 days prior to the hearing. This timeframe can be extended for good cause. RCW 7.105.165
<https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.165>
- ✓ 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 on 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 7.105.200(9)
<https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.200>, ER 412
http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=ER&ruleid=gaer0412
- ✓ 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 7.105.225(1)(b)
<https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.225>
 - ✓ Where the petitioner and respondent attend the same elementary, middle, or high school, the court may order the respondent to **transfer to another school** after weighing, among other facts, the severity of the act, any continuing physical danger, emotional distress and educational disruption to the petitioner, and financial difficulty and educational disruption to the respondent. RCW 7.105.310(i) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.310>
 - ✓ The court **shall not deny an order** due to: the **minor status** of either party; the petitioner's **failure to report the assault** to law enforcement; the **absence of proof of physical injury** to the victim; that a **no-contact order** in a criminal or domestic relations proceeding has been issued; the **relief sought by the petitioner may be available in a different action** or proceeding; **criminal charges are pending** against the respondent; or the **respondent no longer lives near the petitioner**. RCW 7.105.225(2),(3)
<https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.225>
 - ✓ The court **may not deny an order** due to the **voluntary intoxication** of either party or the petitioner's engagement in **limited consensual touching**. RCW 7.105.225(3)(a)-(c)
<https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.225>
 - ✓ If the court declines to issue a protection order, or declines a request to include one or more of the petitioner's minor or vulnerable adult family or household members, the court shall state in writing the particular reasons for the court's denial. RCW 7.105.225(5)
<https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.225>
 - ✓ Where there is evidence of the petitioner's intoxication, the court must determine the petitioner's **capacity to consent** on the record. *Nelson v. Duvall*, 197 Wn. App. 441, 387 P.3d 1158 (2017), RCW 7.105.200(10) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.200>
 - ✓ A final SAPO may be effective for **a fixed period of time or be permanent**. The court shall not grant for less than one year unless the petitioner specifically requests a shorter duration. RCW 7.105.315 <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.315>
 - ✓ **Mutual protection orders are not permitted**. RCW 7.105.310(4)(b)
<https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.310>

- ✓ A best practice is to **call uncontested SAPO hearings involving only entry of a default, dismissal or continuance at the beginning of the calendar** and to **schedule contested SAPO hearings at the end of the calendar**, see Sec. XIV (B)(2), Ch. 9, (p. 9-20)
- ✓ The court should position the parties and assign court and security personnel in courtroom areas to **prevent contact between the parties**, see Sec. XIV (A), Ch. 9, (p. 9-19)
- ✓ Whether or not a petitioner has retained an attorney, a **sexual assault or domestic violence advocate** must be allowed to accompany the petitioner to court, or appear remotely with the petitioner. Unless the sexual assault or domestic violence advocate seeks to speak directly to the court, advocates shall not be required to be identified on the record beyond stating their role as a sexual assault or domestic violence advocate and identifying the program for which they work or volunteer. If a petitioner does not have an advocate, whether or not they have retained an attorney, they must be allowed a **support person** to accompany them, or appear remotely, to any legal proceeding. RCW 7.105.250
<https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.250>
- ✓ If the respondent is represented, the court may **appoint an attorney for the petitioner**. RCW 7.105.240 <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.240>
- ✓ When hearing a **request to stay, continue, or otherwise delay a hearing due to a concurrent criminal case or investigation**, the courts shall apply a rebuttable presumption against such delay, and must consider on the record similarities between the civil and criminal cases; status of the criminal case; interests of the petitioner in proceeding expeditiously and potential prejudice and risk to petitioner of a delay; burden on the respondents; convenience of the court; interests of persons not parties to the civil litigation; and interest of the public. RCW 7.105.200(4)
<https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.200>, RCW 7.105.400(4)
<https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.400>, *King v. Olympic Pipeline*, 104 Wn. App. 338, 16 P.3d 45(2000), *Smith v. Smith*, 1 Wn. App. 2d 122, 404 P.3d 101 (2017).
- ✓ Hearings may be conducted upon the information provided in the sworn petition, live testimony of the parties **should they choose to testify**, and any additional sworn declarations. Live testimony of witnesses other than the parties may be requested by a party, but shall not be permitted unless the court finds that live testimony of witnesses other than the parties is necessary and material. RCW 7.105.200(5)
<https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.200>.