

## Resources and Recommendations for Implementation of Emergency Order Regarding Protection Orders

These comments are intended to assist courts with implementing the most recent emergency order concerning protection orders.

**Filings.** The order encourages courts to provide alternative means for the filing of petitions for civil protection orders and motions for temporary protection orders if the courthouse is closed to the public or is restricting public clerk's office hours due to the public health emergency.

Courts may wish to create similar processes or promote resources available at the following links:

- a. King County Superior Court's directions for submitting by email for an ex parte temporary protection order:  
<https://www.kingcounty.gov/courts/clerk/PO.aspx>
- b. Resources from King County Prosecutor's Office for filing for protection orders during the COVID-19 emergency:  
[https://protectionorder.org/assets/docs/King\\_County\\_Protection\\_Order\\_Remote%20Filing\\_002.pdf](https://protectionorder.org/assets/docs/King_County_Protection_Order_Remote%20Filing_002.pdf)
- c. Explanation of protection orders:  
<https://protectionorder.org/#deeplink1>

**Hearings.** Procedures to permit motion hearings via telephone, video, or other means should be adapted or applied to the protection order proceedings. See the sample Domestic Violence Protection Order hearing instructions [here](#).

Courts also should have in place or create procedures to conduct hearings that must occur in person consistent with social distancing and other public health measures.

Courts must make sure that a record of the proceeding is made and preserved. For example, courts may not use Zoom or Skype if there are no means for recording the proceedings.

Courts also must consider the open courts doctrine. Hearings occurring by videoconference or telephone must be available to the public. It is recommended that courts make findings consistent with *State v. Bone-Club*, 128 Wn.2d 254, 906 P.2d 325 (1995) and *The Seattle Times v. Ishikawa*, 97 Wn.2d 30 (1982), in order to hold hearings remotely.

**Setting of Hearings.** Judicial officers should make a record of the circumstances considered to exercise discretion in setting hearing dates and setting the duration of temporary orders of protection. Courts should follow the statutory timeframes but may extend the hearing date based on the circumstances. Judicial officers should address and consider the circumstances set forth in the order: agreement of the parties, reasonable estimates for completing service, lack of prejudice, and specific findings of good cause, which may include the public health restrictions in place due to the public health emergency. Courts must balance numerous factors, including the need for a longer period of time to accomplish service when necessary, the necessity of personal service in any given case based on safety issues, and reasonable availability of service to provide sufficient advance notice, and the overall goal of a prompt full hearing.

**Service of Petitions and Temporary Protection Orders.** The Governor's proclamation generally suspends the requirement of *personal* service of the petition for a protection order, temporary protection order or guardian appointment, giving courts discretion to consider the method of service. Types of permissible service include service by law enforcement, including electronic service with acknowledgment of receipt, service by process servers, agreed service memorialized in a writing, service by publication and/or service by first class mail. Judicial officers should address the type of service anticipated. Judicial officers have authority to direct or require a specific type of service, and should

require in-person service by law enforcement of orders involving the surrender of weapons, removal of the respondent from a shared residence, and the removal of children or change of custody of children is ordered. It is recommended that the temporary order and/or instructions that the petitioner receives from the court specifically address service.

The statutes generally require that the petitioner submit proof of service on the respondent at least five days prior to the hearing. Courts should ensure that appropriate service was achieved before permitting defaults, for example.

**Regarding service by electronic means by law enforcement, the following tips are useful:**

- **Text:** If law enforcement has a mobile number for the respondent that accepts texts, law enforcement may text the documents to the respondent. Law enforcement should provide with the Return of Service images of the screenshot of the text message exchange and details confirming law enforcement's knowledge that the mobile number is the respondent's. Law enforcement or the petitioner should consider presenting the court with persuasive details regarding the identity of the user and frequent use, including evidence of other communications from the telephone number known to be from respondent.
- **Email or social media applications:** If law enforcement has an e-mail address or social media messaging application for the respondent, law enforcement may transmit the documents to the respondent, using the read receipt email feature if possible. Law enforcement should provide with the Return of Services copies of the sent email or messages, any replies, and any read receipt or confirmation, and details confirming law enforcement's knowledge that the email address or social media account is the respondent's. Law enforcement or the petitioner should consider presenting the court with persuasive details regarding the identity of the user and frequent use, including evidence of other communications from the email or social media account known to be from respondent. Law enforcement should maintain the emails and messages electronically if possible.
- **Other:** Law enforcement may consider other ways to confirm the respondent's actual notice. Law enforcement may call the respondent and document calls in the Return of Service or via recording. During a telephone call law enforcement can confirm text and email addresses and the respondent's receipt of such communications. Information from the temporary protection orders to be served can be relayed including prohibitions and date, time and location of hearing. Best practice: law enforcement obtains an email address and/or text number from the

respondent and follows up by emailing and/or texting documents, requesting and receiving confirmation of their receipt.

**Firearms Surrender.** Courts may consider adapting procedures to permit Order to Surrender Weapons compliance hearings via telephone, video, or other means when consistent with public safety. See the sample “Weapons Compliance Review” instructions [here](#). See a sample order to surrender weapons [here](#).