

Guidelines for Domestic Violence Protection and Antiharassment Orders

- **Domestic violence is learned behavior.**
- **Domestic violence typically involves controlling behavior encompassing different types of abuse.**
- **It is the perpetrator – *not* substance abuse, *not* the victim, *not* the relationship – that causes domestic violence.**
- **Danger to the victim and children is likely to increase at the time of separation.**
- **The victim’s behavior is often a way of ensuring survival.**

Civil protection orders

1. Jurisdiction

Superior, District, and Municipal Courts may issue temporary and permanent orders, except District and Municipal Courts must transfer certain cases to Superior Court after entry of a temporary order. RCW 26.50.010(4) and RCW 26.50.020(5).

2. Transfer of jurisdiction

- Superior Court is already hearing this matter or a RCW Chap. 13.34 case.
- Issues exist involving children.
- Petitioner requests exclusion of respondent from a shared dwelling. RCW 26.50.020(5)

3. Availability

Available under RCW 26.50 (civil protection orders), RCW 26.09 (dissolution and legal separation), RCW 26.10 (third-party custody), and RCW 26.26 (paternity). RCW 26.50.025.

4. Parties

“Family or household members” includes:

- Spouses and former spouses.
- Parents of a child.
- Adults related by blood or marriage.
- Adults who are presently residing together or who have resided together in the past.

- Persons 16 years of age or older who are presently residing together or who have resided together in the past **and** who have or have had a dating relationship.
- Persons 16 years of age or older who have or have had a dating relationship.
- Persons with a biological or legal parent-child relationship, such as stepparents or grandparents. RCW 26.50.010(2).

5. Definition

“Domestic violence” means physical harm, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking. RCW 26.50.010(1).

6. No contact

No contact requested? Is some contact desired? If so, be specific as to what is restrained. RCW 26.50.070.

7. Exclusion – location

Exclusion from a location requested? Petitioner’s residence, workplace, school, or child’s daycare or school. RCW 26.50.060(1)(b) and 26.50.070.

8. Prohibition – distance

Prohibition from a specified location requested? Set the distance from the specific locations so law enforcement can reasonably measure and enforce, i.e., 100 feet or 100 yards. RCW 26.50.060(1)(c) and 26.50.070.

9. Children

- Who is the legal custodian?
- Are there any existing court orders affecting custody? Check JIS or JABS. RCW 26.50.135(c).
- Parenting plans are not necessary, but visitation can be established. RCW 26.50.060(1)(d).

10. Personal property

Court has jurisdiction to award:

- “Essential personal effects” which means items necessary for a person’s immediate health, welfare, and livelihood. RCW 26.50.010(7).
- Use of a vehicle. RCW 26.50.060(1)(k) and (l).

11. Firearms

- Court **shall** require surrender to law enforcement or other person if *clear, cogent, and convincing* evidence shows use, display, or threat with firearm or other deadly weapon in a felony or ineligibility of respondent to possess a firearm.
- Court **may** require surrender if the above is shown by a *preponderance*. RCW 26.50.060(1)(j), RCW 26.50.070, RCW 9.41.040 and RCW 9.41.800.

Note: Federal firearms prohibition applies when: (1) the person had actual notice of the hearing and an opportunity to be heard; (2) the order restrains the person from harassing, stalking or threatening an intimate partner or child; and **either** (3) the court finds the person presents a credible threat of harm to the intimate partner or child **or** (3) the order contains explicit language restraining the person from using, attempting to use or threatening to use physical force against the intimate partner or child. 18 USC 922(g)(8). The majority of permanent orders entered will invoke the federal prohibition, **but** the federal definition of an “intimate partner” only includes a spouse, former spouse, other parent of a child, or a cohabitant or former cohabitant. 18 USC 921(32). Washington protection orders can also be issued in cases involving relatives by blood or marriage and dating relationships.

12. Duration

Fixed period or permanent unless children involved, then one year if the order is issued under RCW 26.50,

but can be otherwise under RCW chapters 26.09, 26.26 and 26.10. RCW 26.50.060(2).

13. Realignment of the parties

Mutual orders are *not* allowed, but the court may realign the designation of the parties where the court finds the original petitioner is the perpetrator. RCW 26.50.060(4) and (5).

14. Evidence rules

Evidence rules do not apply. ER 1101(c)(4).

Oral instructions to accompany entry of protection orders

- A violation is a criminal offense.
- Any assault that is a violation is a Class C felony.
- A violation will result in an inability to possess firearms including revocation of concealed weapons permits.
- A violation is grounds for immigrant deportation.
- This is the court’s order. The petitioner cannot modify the order.

Criminal no-contact orders

1. Availability

May be issued before, after, or concurrent with civil protection orders.

2. Pre-arraignment

Order may be issued after an arrest or a charge. RCW 10.99.040(2). Expires at arraignment or within 72 hours if no charges filed. RCW 10.99.040(5).

3. Arraignment

Court may extend the pre-arraignment order or issue a new one. Order expires if charges are dismissed or upon acquittal. RCW 10.99.040(3).

4. Post-trial

Order may be issued after a finding of guilt. Expires upon termination of the sentence or elimination of that condition of the sentence. RCW 10.99.050(1).

Antiharassment orders

1. Jurisdiction

District Court is primary and Superior Court has concurrent jurisdiction to accept transfers. RCW 10.14.150.

2. Transfer of jurisdiction

- When the respondent is under the age of 18.
- When other meritorious reasons exist. RCW 10.14.150.

3. Petitioners

Petitioners do not need to establish a special relationship to the respondent and can include parents of minors under 18 years of age requesting an order restraining an adult. RCW 10.14.040(6).

4. Minor petitioner – minor respondent

Parent or guardian may request an antiharassment order on behalf of a minor against a respondent who is less than 18 year of age who has committed or been investigated for an offense against the minor. RCW 10.14.040(7).

5. Unlawful harassment

“Unlawful harassment” requires a knowing and willful course of conduct that seriously annoys, alarms, harasses, or is detrimental and serves no legitimate or lawful purpose. “Reasonable person” or “reasonable parent” standard. RCW 10.14.020(1).

6. Relief available

Antiharassment order may:

- Restrain contact.
- Restrain surveillance.
- Prohibit respondent from being within a specified distance of petitioner’s residence or workplace.
- Require surrender of weapons pursuant to RCW 9.41.800.
- Prohibit a minor respondent from attending petitioner’s child’s school. RCW 10.14.080(6) and (7).

7. Duration

One year maximum unless the court finds the respondent is likely to resume harassment once the order expires, then it can be for a fixed or permanent duration. RCW 10.14.080(4).

8. Violations

Violations by adults are gross misdemeanors or punishable by contempt. Violations by respondents less than 18 years of age are punishable by contempt under RCW Chapter 7.21. RCW 10.14.120.

Minors as parties in DV or antiharassment cases

- Guardian must appear for minors except for 16- and 17-year-olds in civil protection order proceedings. RCW 4.08.050 and RCW 26.50.020(2) and (3).
- Procedure is at the discretion of the court with most courts appointing a parent, public defender, or other adult to serve as guardian.

Perpetrator treatment

1. Availability

May be ordered as part of a civil protection order. RCW 26.50.060(1)(e).

2. Certified program required

Treatment by an agency certified under WAC 388-60 should be required. RCW 26.50.150.

3. Anger management

Anger management classes are not appropriate for perpetrators and are not certified.

4. Other types of counseling

Marital, couple, and religious counseling are not appropriate for perpetrators as they implicate the victim as part of the problem.

Modification/termination requests

1. Procedure

Require notice and hearing. RCW 26.50.130.

2. Court discretion

Public policy gives the court discretion to modify, terminate, or maintain the order. *State v. Dejarlais*, 136 Wn.2d 939, 969 P.2d 90 (1998).

3. Educate petitioners

Educate the petitioner on the alternatives to termination of the protection order such as eliminating portions or modifying restrictive language.

4. Dismiss with grace

Dismiss the petition, not the petitioner. Remind the petitioner that the court is always available in the event an order is needed in the future.

Foreign protection orders

1. Definition

“Foreign protection order” means an injunction or order related to domestic or family abuse, sexual abuse, or stalking. RCW 26.52.010(3).

2. Applicability

Applies to civil or criminal orders issued by a court of a state, a U.S. territory or possession, Puerto Rico, the District of Columbia, the U.S. military, or a Native American tribe. RCW 26.52.010(3).

3. Validity

The issuing court must have jurisdiction over the parties and subject matter, and the person under restraint must be given notice and the opportunity to be heard. RCW 26.52.020.

4. Washington State filing unnecessary

Filing is not a prerequisite to enforcement in this state, but the clerk must file a proper foreign protection order without a fee if requested. RCW 26.52.030

5. Child custody disputes

Child custody disputes are resolved by applying RCW Chap. 26.27 and the PKPA 28 U.S.C. 1738A. RCW 26.52.080(1).

6. Writ of habeas corpus

Writ of habeas corpus must be issued from a Superior Court in Washington in order for law enforcement to remove the child from his or her current placement absent abuse or neglect. RCW 26.52.080(2).

7. Violations

Violations are punishable under RCW 26.50.110. RCW 26.52.070.

Barriers to victims leaving

1. Perpetrator violence

Perpetrator’s escalating violence and control.

2. Economic barriers

Lack of housing, loss of income for self and children, loss of health, transportation, or other resources.

3. Protection of the children

Connection to the perpetrator through the perpetrator’s access to the children.

4. Lack of support

Religious, cultural, or family values that the family unit must be preserved at all costs; or victim blaming by service providers, law enforcement, or the courts.

5. Effects of trauma

Immobilization by psychological and physical trauma.

6. Inadequacy of court response

Failure of court to hold perpetrators accountable or protect victims.

Web sites and resources

- Forms: www.courts.wa.gov/forms.
- *Domestic Violence Manual for Judges*, produced by the Washington State Gender and Justice Commission.
- American Bar Association: www.abanet.org.
- National Coalition Against Domestic Violence: www.ncadv.org.
- Washington State Coalition Against Domestic Violence, 8645 Martin Way NE, Suite 103, Olympia, WA 98516, 360/407-0756.

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