



H.B. 1320

Civil Protection Orders

Listening Forum Report

September - October 2021

Introduction

In accordance with [Chapter 215, 2021 Laws](#), E.S.S.H.B. 1320, Civil Protection Orders, for the purpose of furthering the goal of modernizing and streamlining the efficiency and accessibility of laws relating to civil protection orders, the Washington State Women’s Commission (“WSWC”), hosted eight listening sessions across the state to hear directly from domestic violence and sexual assault survivors, survivor advocates, and other interested stakeholders.

The purpose of the Listening Forums was to support the work of the Gender and Justice Commission of the Washington State Supreme Court, and to gather input directly from advocates and survivors about their experiences seeking and obtaining Civil Protection Orders, and to identify areas in need of improvement to existing processes.

Though originally intended to be held in-person, due to the COVID-19 pandemic, the WSWC held these eight listening sessions online, through a Zoom meeting format, providing appropriate levels of anonymity and confidentiality where necessary, in order to facilitate open and candid input from survivor advocates and directly impacted members of the community. Each session lasted roughly an hour and a half.

The sessions were scheduled to target geographically diverse areas around the state, although participation in meetings was not limited to participants only from those targeted locations. Many participants attended the meeting which best fit their schedule versus the one scheduled for their geographic location. The identified geographic locations included Spokane, Whatcom County, Bellingham, Yakima, Walla Walla, King, Pierce, Thurston, and Clark Counties. WSWC also scheduled an additional forum specifically for directly impacted domestic violence and sexual assault survivors, for which the WSWC sought to provide additional level of privacy. Fifty-two survivors, survivor advocates, and survivors’ representatives participated in the eight listening sessions.

The Listening Forums were facilitated by Grace Huang, Chair of the Safety Committee of the Washington State Women’s Commission, Director of Policy for the Asian-Pacific Institute on Gender-Based Violence, and Member of the American Bar Association Commission on Domestic & Sexual Violence. Commissioner Huang provided participants with background information on E.S.S.H.B.1320 and facilitated the listening sessions following a list of standardized questions that had been prioritized by the coordinators of the H.B. 1320 workgroup of the Washington State Supreme Court Gender and Justice Commission.

These questions were used to structure the sessions, so each session was uniform in organization. Time was then allowed for any additional input that participants wished to share but did not fall under the pre-set Q&A format. This report presents an overview of the input provided by the advocates, stakeholders, and survivors that participated.

This report categorizes issues based on the Gender and Justice Commissions priority question topics: Inclusion of Coercive Control in the Definition of Domestic Violence, Harmonization of Jurisdiction, and Best Practices for Minor Petitioners and Respondents as well as additional pertinent feedback.

Priority 1: Inclusion of Coercive Control in the Definition of Domestic Violence

*“The headline is absolutely Yes!
We should add coercive control!”
-DV Survivor*

When asked whether coercive control should be included in the legal definition of domestic violence, the overwhelming majority of participants, across the state, agreed that coercive controlling behavior needed to be given more judicial weight than currently being considered by civil protection order courts. According to survivors and survivor advocates, examples of coercive control are currently already being included in protection order petition narratives. Stakeholders reported petitioners citing coercive controlling behaviors such as isolation from support systems and communities, financial control (bank accounts, debit cards, EBT cards, etc.), threats to immigration status, withholding or threatening to withhold one’s child, withholding access to medical and reproductive healthcare, gaslighting tactics, acts of violence as an intimidation tactic (i.e., breaking things, throwing things, threats of harm to loved ones or pets), and abusive litigation tactics. However, the weight applied to claims of coercive controlling behaviors, as the law stands currently, is highly subjective and being inconsistently applied by different courts across the state.

*“We know that in relationships and domestic violence relationships it doesn't start out with the sexual assault. It doesn't start out with the strangulation or the stalking. It starts with the coercive control and by not including it what we're basically saying is that we're allowing Survivors to experience extreme trauma, and it has to rise to a certain level before we'll even take it seriously and there's just so much that can be prevented if courts really included that.”
-DV Stakeholder*

To counteract the described subjectivity and inconsistency when interpreting the impact of coercive control in protection order cases, stakeholders across the state recommended increased mandated education for judges and commissioners on what coercive controlling

behaviors are, how coercive control manifests in a relationship, the harm those behaviors cause, and how early intervention could prevent future harm.

“I know sometimes it's difficult to get education to judges and have them really understand at that deep level, but it's certainly worth the effort to continue to try to do that.”

-DV Advocate

“My big thing is that I really, really want the courts to be compelled to learn about the dynamics of domestic violence, all the aspects of it ... until they get additional education, they will likely make wrong decisions. I think especially when it's not the traditional scenario, like when you have a same sex couple.”

-DV Advocate

When asked if survivors and stakeholders are concerned that the addition of coercive control to the definition of domestic violence could be used by abusers against victims, most participants opined that abusers already use the courts and the current system to further the control of the survivor. The majority opinion was this concern should not dissuade the Legislature from adding coercive control to the domestic violence definition.

“Abusers are already using the system. They are already manipulating the system. This is not about expanding the abuser’s power through adding coercive control. This is making sure victims and survivors have more tools and resources available. Let's stop just focusing on what abusers can do and can we really focus on what survivors are saying that they need.”

-DV Stakeholder

However, there were a few differing opinions on this topic. One participant expressed apprehension with adding coercive control to the definition of domestic abuse over concern that it could pull coercive control into a separate filing category from physical domestic violence matters. In that case, the advocate expressed concern this could distract from the petitioner’s ability to paint a complete picture of the abuse and abusive behaviors endured for the court’s consideration. Another concern raised was about the wording of the definition, because if the definition is not carefully constructed, survivors could fall victim to unintended and unforeseen consequences. One advocate made reference to the unintended consequences of the “mandatory arrest law” which had been widely advocated for by domestic violence survivors,

advocates, and organizations, but has resulted in some survivors who seek help from law enforcement having been arrested, further burdening them and contributing to their trauma.

“Thinking about mandatory arrest, how that was really advocated for because it was thought that that was really going to make the difference... but in the end, did not serve survivors or meant that they got arrested instead. There was an outcome that was not even seen as a possibility. So, it does feel that way in this situation as well ... there's that potential for it to be something that works against a survivor rather than for survivor. Do we have what we need to in order to make that distinction?”

-DV Advocate

Another repeatedly expressed theme statewide was survivors frequently described greater ongoing hurtful impact of abusers’ coercive controlling behaviors in comparison to the physical abuse they had endured.

“In support groups, survivors tend to talk about coercive control way more than they ever mention physical violence.”

-DV Legal Advocate

Priority 2: Harmonization of Jurisdiction

“I think the more accessible we can make it for people the better it is.”

-DV Legal Advocate

Participants were asked about their experiences with filing for protection orders and in which court they would like to see the petitions addressed. The majority of stakeholders who expressed an opinion, expressed a preference for protection order cases being handled in Superior/Family Court, regardless of whether children are involved. Many participants expressed because domestic violence implicates a family dynamic, Family Court is more appropriate for protection order hearings given the experience of the judges.

“I think every protection order should be seen in Superior Court... These are serious crimes in my opinion, sexual assault, domestic violence, even, acts of harassment -- I think those warrant to be seen in a Superior Court setting.”

-DV Legal Advocate

More pressing than the issue of court jurisdiction for survivors and survivor advocates was the predominant theme of increased accessibility. Accessibility included: allowing for online filing; allowing for virtual and phone court appearances; and being able to file for a protection order in the court that is closest to the petitioner.

In addition to continuing the practice of remote court appearances beyond the COVID-19 pandemic, stakeholders want to see increased coordination within the court system. For example, one recommendation was that if a protection order petition is filed in the wrong court, the court clerks could facilitate access by assuming responsibility for transferring the petition to the correct court, along with providing the petitioner with the appropriate court jurisdiction information before an appearance date, rather than adding the burden for refiling on the petitioner. This would reduce the likelihood the petitioner would travel to court only to have a judge or commissioner send them to a different court on a different date, prolonging the process.

“On occasion you will even see [the petitioner] got the wrong paperwork, which is really frustrating ... we're going to fill it out and [the court] is going to deny you when you go downstairs and you're going to have to do it all again.”

-DV Legal Advocate

Additionally, stakeholders expressed the need for printed, streamlined information in multiple languages for petitioners that advise them on how to successfully file for a protection order. Although the needs of each county differed based on distance to various courts, the feedback was clear that equitable accessibility was crucial.

Furthermore, self-identified survivors reported better outcomes in their cases when there was consistency in the judge or commissioner presiding over their case throughout the process. They expressed that the consistency is beneficial as it allows the judge or commissioner presiding over the case the ability to see and recognize a pattern of behavior over time. They further expressed the desire to have their domestic violence protection order cases heard in Family Court as they felt those judges were better educated on and more attune with domestic violence dynamics.

“I never had the same commissioner twice when I would go for a TRO or TO. I saw at least 3-4 different commissioners. I did not feel my final commissioner was well-versed in DV dynamics, especially abusive use of conflict, which resulted in both of us being hit with TROs which had a huge impact on my parenting plan going forward.”

-DV Survivor

Amidst the wide support from survivors and advocates for the ability to appear in court remotely, there are concerns that have arisen. One significant concern pertains to instances in which petitioners have been given wrong information about how to appear virtually or telephonically, resulting in a protection order being terminated or the petition dismissed due to failure to appear. Such errors result in further burdens on petitioners as they must start the process over and they face increased financial strain.

“We've also had some access issues with folks going for Protection Orders and then getting the wrong information about how to virtually or telephonically come into court for their date. Then their order is terminated and thrown out. They have to start all over again. Which is problematic for working class folks who have to take off the middle of their day or a full day of work to get access to court at all, even if they're coming in virtually. So that's peripheral, but also central for their experience.”

-DV Legal Advocate

Another concern cited regarding remote court appearances is the lag time between the protection order having been granted and when it is uploaded in the law enforcement system. One stakeholder cited cases in which abusers were able to continue to abuse and harass the survivor without repercussion because the petitioner did not yet have a copy of the issued order, and law enforcement was unable to verify the existence of the order in the system. Participants strongly recommended that orders be uploaded into the law enforcement system and emailed to the petitioner immediately at the conclusion of the hearing.

“The difficulty that we're having is that the abuser is allowed to continue to have access to the survivor in between time when the survivor doesn't have copies of [the] certified order. We've had instances where we called the police, but the police are saying well if I can't see it in my system, you don't have a hard copy, he hasn't been served, so therefore there's nothing we can do. So that's one significant difference of when you go to court, you walk out with it right away...”

- Family Law Attorney

Priority 3: Best Practices for Minor Respondents and Petitioners

“There is often more concern about the abuser’s future, than the impact this has on this young [victim] who may be may have been experiencing dating violence, may have been experiencing stalking.”

-SA Stakeholder

“If both the petitioner and respondent go to the same school, I print out a school map and then show them these are yours classes and you'll walk this way, and this person will walk this way. That's how to combat if they're both in the same school so to not have one of them have to leave. That's just what we do. I just come prepared with that information.”

-DV Legal Advocate

When asked about best practices for handling minor respondents and petitioners, participants described different responses depending on school district size. In the counties where the school district is sufficiently large enough to support multiple school options, courts generally will issue orders that provide that the respondent or petitioner move to another school within the district. However, many participants indicated that the school districts in their communities did not have that capacity. In those cases, the courts issue orders that require that the parties do their best to avoid each other while at the same school. Stakeholders expressed concern that schools play the role of enforcing protection orders on their own. The stakeholders that shared their opinions on this topic universally stated that schools tend to handle the violation of protection orders internally and do not formally involve law enforcement.

“What happens is the school district ends up trying to police [protection orders] in some way, which in my opinion, is not a great idea. I think if there's a violation of an order they should be calling the Sheriff's Department and what we see is that is not happening. If the school has to be involved with trying to figure out how to enforce orders, they're, typically, going to internally try to figure it out rather than calling for a violation of the order.”

-DV Legal Advocate

Another topic frequently discussed by participants across the state related to who should be able to file the petition for a minor. Participants expressed the concern that many minor victims do not want or are uncomfortable involving their parents in petitioning, especially when sexual assault is involved.

In other cases, participants gave examples of parents who wanted to file against the wishes of the minor involved or refused to file when the minor wanted legal action.

“In our counties, in order for a minor to get a protection order, it has to be filed by their parent on their behalf. Sometimes I think that might be a barrier, because sometimes we've got parents who are really overprotective and the child who is 16 or 17 may not want this protection filed or maybe the child does want this protection order filed, but their parents don't think that it needs to be filed. So, those are things that I've seen to be hiccups in the way that things can happen.”

-DV Legal Advocate

Other participants identified privacy concerns as a reason that parents declined to file for a protection order. Even when the parents might support the need for a protection order they are often frightened that their home address would become public record and fear the negative repercussions that information could have on their family if shared.

“I did have a parent that declined to file one come in work with me recently – they chose not to file on the basis of needing their address to stay confidential. There was concern about the address not staying confidential and retaliation associated with that. Also, the school resource officer, the police officer stationed at that school, declined to provide a copy of the police report... We called together and he declined again. But on the basis of needing to share the address and not being able to get any evidence at all, the parent decided just not to file.”

-DV Legal Advocate

Though the experience of navigating protection orders with minor petitioners and respondents varied across the state, a common concern expressed by participants was that judges and commissioners seem to worry more about how the incident and subsequent protection order will negatively affect the future of the respondent with, seemingly, little regard for how the victim is negatively affected by the court's decision.

“Young girls of color are most impacted. I think our court systems are so concerned about the future of the youth that they are more likely to protect the abuser's future than they are on the young victim's future, because there's also just this inherent built-in idea that, well, that kind of trauma-- that's a woman's burden.”

-Attorney

Conclusionary Thought from Survivors

“It feels as though the burden is on the Survivor to hold their abuser accountable.”

-Spoken by one DV Survivor & echoed by all in the Survivor Listening Session

It was widely expressed by self-identified survivors that they feel it is primarily incumbent on them to hold their abuser accountable, and that the legal system fails to act to keep them safe. Moreover, survivors relayed they felt further victimized while going through the legal system as their abuser continuously used, or is using, the court system to continue the abuse. Examples included abusers using such tactics such as litigation abuse and abusive use of manipulation and conflict, especially in the process of creating parenting plans. WSWC heard from several self-identified survivors who had been embroiled in fighting their abuser in the legal system for over a decade. These survivors reported being financially drained and emotionally harmed as a result.

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