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CASE NO. 92631-0  
IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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DAVID W. AIKEN,

Appellant,

vs.

CYNTHIA L. AIKEN,

Respondent.

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SUPPLEMENTAL BRIEF  
ON BEHALF OF CYNTHIA AIKEN

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 ORIGINAL

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## **INTRODUCTION**

The issues presented in the Aiken matter are important in that they are based on the implementation of the provisions of the Domestic Violence Prevention Act (“Act”). The changes sought by Mr. Aiken would impact the way the courts administer hearings under the Act and would have far reaching implications for all victims of domestic violence across the state of Washington. Given the importance of these issues, Ms. Aiken presents this supplemental brief pursuant to RAP 13.7.

## **SUPPLEMENTAL STATEMENT OF THE CASE**

A unanimous Court of Appeals panel found in favor of Respondent, Cynthia Aiken, in this matter. She sought an Order of Protection under RCW 26.50 for herself and her three children. (CP 246-258) The order that issued after a full hearing only covered Ms. Aiken and her oldest daughter R.A. who was 14 years of age when it issued. The order has since expired. (CP 17-21)

## ARGUMENT

The RCW 26.50.010 (3) defines Domestic Violence as

(a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.

RCW 26.50 is designed to protect victims of domestic violence and to make protection readily available to them. Protection orders often bring peace to families once steeped in anger and violence or the threat of violence. Reports indicate some 86% of the women who received a protection order state the abuse either stopped or was greatly reduced. James Ptacek, *Battered Women in the Courtroom: The Power of Judicial Response* (1999), (reviewed in Meda Chesney-Lind, James Ptacek, *Battered Women in the Courtroom: The Power of Judicial Response*, 35 *Crime, L. & Soc. Change* 363 (2001)).

The statute is presumed constitutional and Mr. Aiken does not challenge the constitutionality of the Act. He does claim that his constitutional right of due process was violated by the court not affording him the right to depose his daughter or to compel her to testify at the hearing.

## Full Hearing

The Act does not prevent a court from ordering a more extensive hearing when necessary, but it does not compel a trial like hearing with live testimony.

In construing the statute, the court's goal is to effectuate the Legislative intent. *State v Sullivan* 143 Wn. 2d 162, 174-5, 19 P.3d 1012 (2001). The statute is to be read as a whole and the provisions of the statute harmonized. *State v Thorne* 129 Wn 2d 736, 761, 921 P.2d 514 (1996). If possible, a statute must be construed to preserve its constitutionality. *Tellevik v. 31641 W. Rutherford St.*, 120 Wn 2d 68 78, 838 P.2d 111 (1992).

RCW 26.50 references a "full hearing" but the meaning describes a hearing that is in juxtaposition with a hearing that is *ex parte* in nature. The phrase "full hearing" appears in only two places in the Act.

RCW 25.50.020(5) states provides in relevant part:

When the jurisdiction of a district or municipal court is limited to the issuance and enforcement of a temporary order, the district or municipal court shall set the **full hearing** provided for in RCW 26.50.050 in superior court and transfer the case. If the notice and order are not served

on the respondent in time for the **full hearing**, the issuing court shall have concurrent jurisdiction with the superior court to extend the order for protection.

And

RCW 26.50.070(1) states:

Where an application under this section alleges that irreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent, the court may grant an *ex parte* temporary order for protection, pending a **full hearing**, and grant relief as the court deems proper, including an order:

Both of these provisions provide that a “full hearing” is in contrast to the initial *ex parte* hearing where no notice is required to the responding party. Elsewhere in the statute, the Act refers to the court issuing restraints “upon notice and after hearing,” without the adjective “full”. The adjective “full” does not appear anywhere else in the statute. The statutory provisions about the hearing in 26.50.50 even permit a hearing by telephone. RCW 26.50.060 delineates the relief available “upon notice and after hearing.”

The goal of statutory interpretation is to discern and implement the legislature's intent, *State v. J.P.*, 149 Wn. 2d 444, 450, 69 P.3d 318 (2003). In interpreting a statute, this court looks

first to its plain language. *Id.* If the plain language of the statute is unambiguous, then this court's inquiry is at an end. *Id.* The statute is to be enforced in accordance with its plain meaning. In this case the plain meaning of a hearing in a domestic violence case, is a standard hearing and does not require testimony or cross examination.

Black's Law Dictionary defined "full hearing" and notably does not include the requirement for live testimony.

**Full Hearing.** 1. A hearing at which the parties are allowed notice of each other's claims and are given ample opportunity to present their positions with evidence and argument.

Black's Law dictionary 735 (8<sup>th</sup> ed. 1990).

The US Supreme court has defined full hearings as a hearing where a party has a reasonable opportunity to know the claims of the opposing party and to meet them. *Morgan v. U. S.*, 304 U.S. 1, 58 S.Ct. 773, 776, 777, 82 L.Ed. 1129 (1938).

The Aiken matter was determined at a Special Set hearing along with issues surrounding the dissolution of marriage action that was then pending. Special set hearings afford the parties extended time for argument and the jurist extended time for

reading materials presented. SCLR 59 e (3) (B). At that hearing the court considered a substantial amount of written evidence and heard argument from counsel for both parties. The evidence included the Petition and declaration of the Petitioner (CP 23-28, 161-190, 235-245, 246-258) , Medical records for the minor child RA (CP 329-358), Counseling records of the children (CP 359-472), a report from the Guardian ad Litem appointed in the dissolution of marriage case (CP259-264), and the deposition testimony of the Petitioner (CP67-136).

This is a substantial amount of evidence before the court at its hearing for the determination and entry of a one year DVPO. With the Motion for Reconsideration, the Petitioning party, Cynthia Aiken, also submitted additional evidence regarding RA and her state of fear (CP 41-61). No further oral argument was heard pursuant to local rules in Snohomish County concerning hearings on reconsideration. SCLR 59 e (3) (B).

Looking at the nature of Domestic Violence Protection orders and their purpose, requiring oral testimony of victims would have a chilling effect on all future victims who consider seeking

the protection of the court. The Legislative intent is that the act of seeking an order should be simple and accessible to victims. Laws of 1992 Chapter 111, section 1.

### **Due Process**

Mr. Aiken complains that his due process rights were denied him when the court refused to allow oral testimony at the hearing or the deposition of RA. Ms. Aiken was deposed for over an hour by counsel for her husband. Procedural due process is determined by balancing 1. The private interest affected by the proceeding; 2. the risk of error created by the procedure used, and 3. the governmental interest which supports the use of the challenged procedure. *Mathews v. Eldridge*, 424 US319, 335, 96 S. Ct. 893, 903 47 L.Ed. 2d 18 (1978); *In re Welfare of SE.*, 63. Wn App 244, 249, 820 P. 2d 47 (1991).

While Mr. Aiken's right to parent his children is a considerable right, it is offset by the right of his wife and children to be safe in their surroundings. *Spence v. Kaminski*, 103 Wash. App. 325, 336, 12 P.3d 1030, 1036 (2000). In addition, Mr. Aiken's right to see this one child was only impacted for a limited time and this length of time is also to be considered under the *Mathews* test, 424 US at 341, 96 S.Ct. 893. The risk

of error in this case was small considering the level of evidence and time the court took to consider it and the oral argument of counsel. Finally, the government interest is for a process that allows for the processing of these cases in a judicious yet economical fashion. Imposing a requirement for long hearings that include oral testimony would create a significant financial and time burden on the court. The governmental interest factor relates to practical and financial burdens to be imposed upon the government were it to adopt a possible substitute procedure for the one currently employed. *Nguyen v. Department of Health*, 144 Wn 2d 516, 532, 29 P. 3d 689 (2001). In addition, such a requirement would be daunting to many victims who already view the court system as scary and difficult to handle. This is totally contrary to the intent of the statute and the level of domestic violence in Washington State.

Two of this court's esteemed Justices, in rendering their concurring opinion in *Gourley v Gourley*, 158 Wn 2d 460, 145 P.3d 1185 (2006), commented that they would have held that the *Mathews* test requires the opportunity to cross examine at a full hearing but for other factual reasons relating to the *Gourley* case. However, close examination of the statute as a whole and the underlying purpose of the law, strongly suggests that the purpose is to make the obtaining of such orders as easy as possible for victims of violence and not to create further barriers. The statute calls for

forms to be provided and for assistance to be available from the court clerks, no filing fees, interpreters when needed, service by mail and service by law enforcement. RCW 26.50 All of these provisions mitigate toward the underlying purpose of protecting victims in our state.

### **Standard of proof**

Mr. Aiken also argues that the standard of proof in seeking a DVPO should be clear cogent and convincing evidence as opposed to preponderance of the evidence. Clear cogent and convincing evidence is evidence that goes beyond the mere preponderance. It is evidence that means proof that leaves no reasonable doubt in the mind of the trier of fact.

In 2009 the standard of proof used in Civil Protection Orders for all fifty states was surveyed by the University of Baltimore School of Law Family Law Clinic and updated by the American Bar Association Commission on Domestic Violence. A.B.A. Comm. On Domestic Violence, Standards of Proof for Domestic Violence Civil Protection Orders (CPOs) by State, as Prepared by University of Baltimore School of Law Family Law Clinic 2009. The vast majority of states have adopted a preponderance of the evidence standard, or a similar discretion of the

court. Only Maryland uses the Clear and Convincing standard. (See Appendix A.)

Increasing the standard of review also contributes to the barriers for victims of violence in obtaining orders. Domestic violence often occurs in private between intimate partners. Criminal prosecution does not always accompany acts of violence or threats. Meeting a more stringent burden of proof would make the obtaining of a protective order much more difficult. Given many victims proceed *pro se*, they would be especially burdened.

The Domestic Violence Prevention Act was created with a “tool to increase safety for victims and to hold batterers accountable.” Findings Laws 1992 Ch 111. The process includes the ability to obtain an *ex parte* order without notice pending a hearing. The Respondent must be personally served with adequate advance notice to prepare a response. Mr. Aiken clearly had adequate notice in this case as the hearing did not occur until over two months after the temporary order issued. This provided Mr. Aiken ample time to depose the Petitioning party, his wife.

Studies have shown that many victims already view the process as too difficult or inconvenient. Carol E. Jordan, *Intimate Partner Violence and the Justice System*, J. Interpersonal Violence 1412, 1424 (2004).

Placing both child and adult victims in the position of having to not only testify but to elicit testimony from the perpetrator is setting a high bar indeed.

## **CONCLUSION**

The court if anything, should clarify its previous decision in Gourley by making it clear that the RCW 26.50 does not require live testimony in order to provide a party with a hearing and due process in a domestic violence protection order case. There are many safe guards to due process established within the statute and the relief being sought in this case was temporary in nature. Opening this Pandora box of requiring live testimony and cross examination essentially creates a large burden not just on the litigants but on the court system that will have to accommodate hundreds, if not thousands, of cases with court rooms, court reporters, jurists and time for live testimony and cross examination.

In this case the decision of this court will be moot as the order has already expired, but the far reaching implications for other victims of domestic violence are at stake.

Ms. Aiken humbly asks you to uphold the court of appeals decision and to deny Mr. Aiken's request, including her award of attorney fees and costs.

Respectfully submitted this 26<sup>th</sup> of May, 2016

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**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 26<sup>th</sup> day of May, 2016, I submitted the Supplemental Brief on Behalf of Cynthia Aiken for Review to be filed with the Supreme Court of the State of Washington as follows:

Ronald R. Carpenter  
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Supreme Court for the State of Washington  
Temple of Justice  
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By: email to [Supreme@courts.wa.gov](mailto:Supreme@courts.wa.gov)

I also caused a true and correct copy of the Supplemental Brief on Behalf of Cynthia Aiken to be delivered by Legal Messenger to the following:

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DATED this 26<sup>th</sup> day of May, 2016.

O'LOANE NUNN LAW GROUP, P.L.L.C.

  
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Gail B. Nunn, WSBA No. 16827  
Attorney for Respondent, Cynthia Aiken

## **APPENDIX**

A.B.A. Comm. On Domestic Violence, Standards of Proof for Domestic  
Violence Civil Protection Orders (CPOs) by State, as Prepared by  
University of Baltimore School of Law Family Law Clinic (2009)



## Standards of Proof for Domestic Violence Civil Protection Orders (CPOs) By State

6/2009

CPO Statute	Definition of Domestic Violence (DV)	Evidentiary Standard?	Language referring to Evidentiary Standard
<b>Alabama</b> ALA. CODE §§ 30-5-6 & 30-5-7	Actual or attempted assault, sexual abuse, stalking, unlawful imprisonment, criminal coercion, harassment, reckless endangerment, child abuse, kidnapping, menacing, theft, trespass between family/household members; anything else that can be punished as crime toward protected class. ALA. CODE § 30-5-2(a)(1)	"Preponderance of the Evidence" ALA. CODE § 30-5-6(a)	"...the plaintiff shall prove the allegation of abuse by a preponderance of the Evidence" ALA. CODE § 30-5-6(a)
<b>Alaska</b> ALASKA STAT. § 18.66.100	Assault, stalking, reckless endangerment, harassment, terroristic threatening, interference with a report of DV, arson or criminally negligent burning, criminal mischief, kidnapping, custodial interference, human trafficking, sexual offenses, burglary & criminal trespass, robbery, extortion and coercion, violating a protective order, murder. ALASKA STAT. § 18.66.990(3)	"Preponderance of the Evidence" ALASKA STAT. § 18.66.100(b)	"If the court finds by a preponderance of evidence that the respondent has committed a crime involving domestic violence against the petitioner, regardless of whether the respondent appears at the hearing, the court may order any relief available under (c) of this section." ALASKA STAT. § 18.66.100(b)
<b>Arizona</b> ARIZ. REV. STAT. § 13-3602	Physical assault, threatening words or conduct, intimidation, harassment by phone or in person, stalking, endangerment, unlawful imprisonment, kidnapping, criminal trespass, criminal damage, disobeying a court order, custodial interference, abuse to a vulnerable adult or child, certain crimes against children, and/or disorderly conduct (fighting, reckless displays of a dangerous instrument, abusive language), and eavesdropping. ARIZ. REV. STAT. § 13-3601(A)	Discretion of the Court Based on the Finding of "Reasonable Cause" ARIZ. REV. STAT. § 13-3602 (E)	"The court shall issue an order of protection under subsection G of this section if the court determines that there is reasonable cause to believe any of the following: 1. The defendant may commit an act of domestic violence. 2. The defendant has committed an act of domestic violence within the past year or within a longer period of time if the court finds that good cause exists to consider a longer period." ARIZ. REV. STAT. § 13-3602(E)
<b>Arkansas</b> ARK. CODE ANN. § 9-15-205	Physical harm, bodily injury, assault, or the infliction of tearful imminent physical harm, bodily injury, or assault between family or household members; or any sexual conduct between family or household members, whether minors or adults, that constitutes a crime. ARK. CODE ANN. § 9-15-103(3)(A)-(B)	"Sufficient Evidence" ARK. CODE ANN. § 9-15-206(a)  Courts May Interpret as "Preponderance of the Evidence"	"If the circuit court finds sufficient evidence to support the petition, the court shall grant a temporary order of protection pending a full hearing." ARK. CODE ANN. § 9-15-206(a)  "[w]e are guided by the principle that the quantum of proof generally required in civil cases is that of preponderance of the Evidence" <i>Collins v. Collins</i> , 347 Ark. 240, 245, 61 S.W.3d 818, 822 (2001)
<b>California</b> CAL. FAM. CODE § 6300-6306, 6320	Actual or threatened: physical injuries, sexual assault, attacking, striking or battering; molesting; harassing; stalking; harassing or stalking phone calls, destroying prop., disturb peace of victim or victim's family members, includes physical, sexual, verbal, written abuse, CAL. FAM. CODE § 6320	Discretion of the Court Based on the Finding of "Reasonable Proof" or "Good Cause" CAL. FAM. CODE §§ 6300 & 6320.	"An order may be issued...if an affidavit or, if necessary, an affidavit and any additional information provided to the court pursuant to Section 6306, shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse." CAL. FAM. CODE § 6300  "The court may issue an issue an ex parte order...and, in the discretion of the court, on a showing of good cause, of other named family or

CPO Statute	Definition of Domestic Violence (DV)	Evidentiary Standard?	Language referring to Evidentiary Standard
			household members." CAL. FAM. CODE § 6320
<b>Colorado</b> COLO. REV. STAT. § 13-14-102	<p>Violence or threat of violence against you (and children under 18).            COLO. REV. STAT. § 13-14-101(2)</p> <p>"Protection order" means any order that prohibits the restrained person from contacting, harassing, intimidating, molesting, threatening, or touching any protected person or from entering or remaining on premises, or from coming within a specified distance of a protected person or premises or any other provision to protect the protected person from imminent danger to life or health that is issued by a court of this state or a municipal court.            COLO. REV. STAT. § 13-14-101(2.4)(a)</p> <p>"Not limited to physical threats of violence and harm but includes financial control, document control, property control, and other types of control that make a victim more likely to return to an abuser due to fear of retaliation or inability to meet basic needs." COLO. REV. STAT. § 13-14-102(1)(b)(I)</p>	Discretion of the Court Based on the Finding of "Sufficient Cause" COLO. REV. STAT. §§ 13-14-102(4) - 102(5) & 102(9)(a)	<p>"A temporary civil protection order may be issued if the issuing judge or magistrate finds that an imminent danger exists to the person or persons seeking protection under that civil protection order."            COLO. REV. STAT. §§ 13-14-102(4)(a) - (b)</p> <p>"Upon the filing of a complaint duly verified, alleging that the defendant has committed acts that would constitute grounds for a civil protection order, any judge or magistrate, after hearing the evidence and being fully satisfied therein that sufficient cause exists, may issue a temporary civil protection order."            COLO. REV. STAT. § 13-14-102(5)</p> <p>"If upon such examination [of the record and evidence] the judge or magistrate is of the opinion that the defendant has committed acts constituting grounds for issuance of a civil protection order and that unless restrained will continue to commit such acts, the judge or magistrate shall order the temporary civil protection order to be made permanent or order a permanent civil protection order with different provision from the temporary civil protection order."            COLO. REV. STAT. § 13-14-102(9)(a)</p>
<b>Connecticut</b> CONN. GEN. STAT. ANN. §§ 46b-15 & 46b(e)	Continuous threat of present physical pain or physical injury. CONN. GEN. STAT. ANN. § 46b-15(a)	Discretion of the Court CONN. GEN. STAT. ANN. § 46b-15(b)	<p>"The court, in its discretion, may make such orders as it deems appropriate for the protection of the applicant and such dependent children or other persons as the court sees fit.... If an applicant alleges an immediate and present physical danger to the applicant, the court may issue an ex parte order granting such relief as it deems appropriate."            CONN. GEN. STAT. ANN. § 46b-15(b)</p>
<b>Delaware</b> DEL. CODE ANN. TIT. 10, §§ 1044 & 1045	intentionally or recklessly, causing or attempting to cause physical injury or a sexual offense; placing or attempting to place another in reasonable apprehension of physical injury or sexual offense to such person or another; damaging, destroying or taking the tangible property of another person; engaging in a course of alarming or distressing conduct in a manner which is likely to cause fear of emotional distress or to provoke a violent or disorderly response; trespassing; child abuse; unlawful imprisonment; kidnapping.	Preponderance of the Evidence DEL. CODE ANN. TIT. 10, § 1044(b), 1045(c)	<p>"If the Court finds by a preponderance of the evidence that the alleged domestic violence has occurred, or if the respondent consents to entry of a protective order, the Court shall grant any appropriate relief, including, but not limited to, the relief set forth in § 1045 of this title."            DEL. CODE ANN. TIT. 10, § 1044(b)</p> <p>"Orders may be extended only after the Court finds by a preponderance of the evidence that domestic violence has occurred."</p>



## Standards of Proof for Domestic Violence Civil Protection Orders (CPOs) By State

6/2009

CPO Statute	Definition of Domestic Violence (DV)	Evidentiary Standard?	Language referring to Evidentiary Standard
	interference with custody and coercion; or Any other conduct which a reasonable person under the circumstances would find threatening or harmful. DEL. CODE ANN. TIT. 10, § 1041		since the entry of the order, a violation of the order has occurred, if the respondent consents to the extension of the order or for good cause shown. DEL. CODE ANN. TIT. 10, § 1045(c)
<b>District of Columbia</b> D.C. CODE ANN. §§ 16-1001 – 16-1005	[A] n intrafamily offense that result[s] in physical injury, including physical pain or illness, . . . [or] that cause[s] or was intended to cause reasonable fear of imminent serious physical injury or death. D.C. CODE ANN. § 16-1031(a)	Discretion of the Court Based on the Finding of "Good Cause" D.C. CODE ANN. § 16-1005(c)  "Preponderance of the Evidence" D.C. CODE ANN. § 16-1005(c-1) (WHEN AWARDING TEMPORARY CUSTODY OF MINORS AND VISITATION RIGHTS).	"If, after hearing, the judicial officer finds that there is good cause to believe the respondent has committed or threatened to commit a criminal offense against the petitioner, the judicial officer may issue a protection order." D.C. CODE ANN. § 16-1005(c)  "...if the judicial officer finds by a preponderance of evidence that a contestant for custody has committed an intrafamily offense, any determination that custody or visitation is to be granted to the abusive parent shall be supported by a written statement by the judicial officer specifying factors and findings which support that determination. D.C. CODE ANN. § 16-1005(c-1)
<b>Florida</b> FLA. STAT. ANN. § 741.30	Any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. FLA. STAT. ANN. § 741.28(2)	Discretion of the Court Based on the Finding of "Reasonable Cause" FLA. STAT. ANN. §§ 741.30(5)(a), (5)(c), (6)(a)  But see case law at right.	"When it appears to the court that an immediate and present danger of domestic violence exists, the court may grant a temporary injunction ex parte, pending a full hearing, and may grant such relief as the court deems proper. . . . Upon notice and hearing, when it appears to the court that the petitioner is either the victim of domestic violence as defined by s. 741.28 or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence, the court may grant such relief as the court deems proper." FLA. STAT. ANN. §§ 741.30(5)(a), (5)(c), (6)(a)  <i>Ray v. Perez-Gunt</i> , 662 So.2d 1328 (1995) states that petitioner is merely required to demonstrate "reasonable cause" to believe that he or she is about to become a victim of domestic violence.  <i>Kopelovich v. Kopelovich</i> , 793 So.2d 31 (2 <sup>nd</sup> DCA 2001) states that the evidence must be "strong and clear."

CPO Statute	Definition of Domestic Violence (DV)	Evidentiary Standard?	Language referring to Evidentiary Standard
<b>Georgia</b> GA. CODE ANN. § 19-13-3	Domestic violence which is referred to as family violence, is the occurrence of acts between past/present spouses; parents of the same child; (step)parents and (step)children; foster parents and foster children; or other persons living or formerly living in the same household. These acts include: criminal trespass, battery, simple battery, simple assault, assault, stalking, criminal damage to property, unlawful restraint, other felonies. GA. CODE ANN. § 19-13-1	"Preponderance of the Evidence" GA. CODE ANN. § 19-13-3(c)	"[A] hearing shall be held at which the petitioner must prove the allegations of the petition by a preponderance of the evidence as in other civil cases." GA. CODE ANN. § 19-13-3(c)
<b>Hawaii</b> HAW. REV. STAT. ANN. § 586-3	"Domestic abuse" includes occurrence of one or more of acts of physical harm, bodily injury, assault, the threat of imminent physical harm, bodily injury or assault, extreme psychological abuse, malicious property damage between family/household members, child abuse, or sexual assault. HAW. REV. STAT. ANN. § 586-1	Discretion of the Court Based on the Finding of "Good Cause" HAW. REV. STAT. ANN. § 586-5.5	"If, after hearing all relevant evidence, the court finds that the respondent has failed to show cause why the order should not be continued and that a protective order is necessary to prevent domestic abuse or a recurrence of abuse, the court may order that a protective order be issued for a further fixed reasonable period, as the court deems appropriate." HAW. REV. STAT. ANN. § 586-5.5(a)  "A protective order may be extended for such further fixed reasonable period as the court deems appropriate. . . . In making a determination, the court shall consider evidence of abuse and threats of abuse that occurred prior to the initial restraining order and whether good cause exists to extend the protective order." HAW. REV. STAT. ANN. § 586-5.5(b)
<b>Idaho</b> IDAHO CODE ANN. § 39-6304	Physical injury, sexual abuse, forced imprisonment, threatening to commit any of these acts. IDAHO CODE ANN. § 39-6303(1)	Discretion of the Court Based on the Finding of "Good Cause" IDAHO CODE ANN. § 39-6306(1)	"Upon a showing that there is an immediate and present danger of domestic violence to the petitioner the court may, if requested, order for a period not to exceed one (1) year that..." IDAHO CODE ANN. § 39-6306(1)  "... an order obtained pursuant to this chapter may, upon motion and upon good cause shown, continue for an appropriate time period as directed by the court or be made permanent if the requirements of this chapter are met...." IDAHO CODE ANN. § 39-6306(5)
<b>Illinois</b> 725 ILL. COMP. STAT. ANN. 5/112A-2	Physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation but does not include reasonable direction of a minor by a parent or person in loco parentis. 750 ILL. COMP. STAT. ANN. 60/103(1)	Preponderance of the Evidence 725 ILL. COMP. STAT. ANN. 5/112A-6(B)	"Any proceeding to obtain, modify, reopen or appeal an order of protection, whether commenced alone or in conjunction with a civil or criminal proceeding, shall be governed by the rules of civil procedure of this State. The standard of proof in such a proceeding is proof by a preponderance of the evidence, whether the proceeding is heard in criminal or civil court."



## Standards of Proof for Domestic Violence Civil Protection Orders (CPOs) By State

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CPO Statute	Definition of Domestic Violence (DV)	Evidentiary Standard?	Language referring to Evidentiary Standard
			725 ILL. COMP. STAT. ANN. 5/142A-6(a)
<b>Indiana</b> IND. CODE ANN. §§ 34-26-5-2 & 34-26-5-9	Attempting to cause, threatening to cause, or causing physical harm to another family or household member, placing another in fear of serious physical harm, causing a family or household member to involuntarily engage in sexual activity by force, threat of force or duress, intent to perform or any actual sexual offense, intent to or actual stalking, and injuring or killing animal with the intent to terrorize household or family member. IND. CODE ANN. § 34-6-2-34.5	"Preponderance of the Evidence" IND. CODE ANN. § 34-26-5-9(f)	"A finding that domestic or family violence has occurred sufficient to justify the issuance of an order under this section means that a respondent represents a credible threat to the safety of a petitioner or a member of a petitioner's household. Upon a showing of domestic or family violence by a preponderance of the evidence, the court shall grant relief necessary to bring about a cessation of the violence or the threat of violence." IND. CODE ANN. § 34-26-5-9(f)
<b>Iowa</b> IOWA CODE §§ 236.2 & 708.1	Assault of family or household member, unwanted sexual activity, (threatening to or causing physical pain or injury (which is insulting or offensive), pointing or firing a gun. IOWA CODE §§ 236.2(2) & 708.1	Discretion of the Court Based on the Finding of "Good Cause" IOWA CODE §§ 236.4 Preponderance of the Evidence IOWA CODE §§ 236.3 (FOR ADULTS ON BEHALF OF AN UNEMANCIPATED MINOR)	"The court may enter any temporary order it deems necessary to protect the plaintiff from domestic abuse prior to the hearing, upon good cause shown in an ex parte proceeding. Present danger of domestic abuse to the plaintiff constitutes good cause for purposes of this subsection." IOWA CODE §§ 236.4 "A temporary or emergency order shall be based on a showing of a prima facie case of domestic abuse. If the factual basis for the alleged domestic abuse is contested, the court shall issue a protective order based upon a finding of domestic abuse by a preponderance of the evidence." IOWA CODE §§ 236.3 (FOR ADULTS ON BEHALF OF AN UNEMANCIPATED MINOR)
<b>Kansas</b> KAN. STAT. ANN. § 60-3104	Intentionally attempting to cause bodily injury, or intentionally or recklessly causing bodily injury, intentionally placing, by physical threat, another in fear of imminent bodily injury, engaging with a minor under 16 years of age and who is not a spouse in sexual intercourse or any lewd fondling or touching meant to arouse sexual desires in either or both the minor and abuser. KAN. STAT. ANN. § 60-3102(a)	Discretion of the Court Based on the Finding of "Good Cause" KAN. STAT. ANN. §§ 60-3106(b) & 60-3107(c) (FOR EX PARTE ORDER) "Preponderance of the Evidence" KAN. STAT. ANN. §§ 60-3106(a) (FOR FINAL ORDER)	"Prior to the hearing on the petition and upon a finding of good cause shown, the court on motion of a party may enter such temporary relief...as it deems necessary to protect the plaintiff or minor children from abuse. Temporary orders may be granted ex parte. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause for purposes of this section. No temporary order shall have the effect of modifying an existing order granting legal custody, residency, visitation or parenting time unless there is sworn testimony at a hearing to support a showing of good cause." KAN. STAT. ANN. §§ 60-3106(b) "Within 20 days of the filing of a petition under this act a hearing shall be held at which the plaintiff must prove the allegation of abuse by a preponderance of the evidence and the defendant shall have an opportunity to present evidence on the defendant's behalf."



## Standards of Proof for Domestic Violence Civil Protection Orders (CPOs) By State

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CPO Statute	Definition of Domestic Violence (DV)	Evidentiary Standard?	Language referring to Evidentiary Standard
			KAN. STAT. ANN. §§ 60-3106(a)
<b>Kentucky</b> KY. REV. STAT. ANN. § 403.725	Physical injury, serious physical injury, sexual abuse, assault, or the infliction of fear of imminent physical injury or serious physical injury, sexual abuse or assault between family members or members of an unmarried couple. KY. REV. STAT. ANN. § 403.726(1)	Preponderance of the Evidence KY. REV. STAT. ANN. §§ 403.750	[I]f the court, if it finds from a preponderance of the evidence that an act of acts of domestic violence and abuse have occurred and may again occur, it may KY. REV. STAT. ANN. §§ 403.750(1)
<b>Louisiana</b> LA. REV. STAT. ANN. § 46:2134	Includes but is not limited to physical or sexual abuse, any offense against the person as defined in the Criminal Code of Louisiana (except negligent injury and defamation), including abuse and neglect of adults. LA. REV. STAT. ANN. § 46:2132(3)	Discretion of the Court Based on the Finding of "Good Cause" LA. REV. STAT. ANN. § 46:2135(A)	"Upon good cause shown in an ex parte proceeding, the court may enter a temporary restraining order, without bond, as it deems necessary to protect from abuse the petitioner, any minor children, or any person alleged to be an incompetent. Any person who shows immediate and present danger of abuse shall constitute good cause for purposes of this Subsection." LA. REV. STAT. ANN. § 46:2135(A)  "The court may grant any protective order or approve any consent agreement to bring about a cessation of abuse of a party, any minor children, or any person alleged to be incompetent, which relief may include but is not limited to: (1) Granting the relief enumerated in R.S. 46:2135." La. Rev. Stat. Ann. § 46:2136(A)
<b>Maine</b> ME. REV. STAT. ANN. TIT. 19-A, § 4005	Attempting to cause or causing bodily injury or offensive physical contact, including sexual assaults, attempting to place or placing another in fear of bodily injury through any course of conduct, including but not limited to threatening, harassing or tormenting behavior, compelling a person by force, threat of force or intimidation to engage in conduct from which the person has a right to abstain or engage in, restricting someone's movements, threatening a crime of violence that places the person in reasonable fear that the crime will be committed, repeatedly and without reasonable cause, following a person or being at or in the vicinity of the person's home, school, business, or place of employment. ME. REV. STAT. ANN. TIT. 19-A, § 4002(1)	Preponderance of the Evidence ME. REV. STAT. ANN. TIT. 19-A, § 4006(1)	[A] hearing must be held at which the plaintiff must prove the allegation of abuse by a preponderance of the evidence. ME. REV. STAT. ANN. TIT. 19-A, § 4006(1)
<b>Maryland</b> MD. CODE ANN., FAM. LAW	An act that causes serious bodily harm, places a person eligible for relief in fear of imminent serious bodily harm, assault in any degree, rape or sexual offense, attempted rape or sexual offense in any	Discretion of the Court Based on the Finding of "Reasonable Grounds."	"If, after a hearing on a petition, whether ex parte or otherwise, a judge finds that there are reasonable grounds to believe that a person eligible for relief has been abused, the judge may enter a temporary protective



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CPO Statute	Definition of Domestic Violence (DV)	Evidentiary Standard?	Language referring to Evidentiary Standard
§ 4-504	degree, false imprisonment and stalking. MD. CODE ANN., FAM. LAW § 4-501(b)(1)	MD. CODE ANN., FAM. LAW § 4-505(a)(1) (FOR EX PARTE ORDER)  "Clear and Convincing" MD. CODE ANN., FAM. LAW § 4-506(c)(1)(ii) (FOR FINAL ORDER)	order to protect any person eligible for relief from abuse." MD. CODE ANN., FAM. LAW § 4-505(a)(1)  "[I]f the judge finds by clear and convincing evidence that the alleged abuse has occurred, or if the respondent consents to the entry of a protective order, the judge may grant a final protective order to protect any person eligible for relief from abuse." MD. CODE ANN., FAM. LAW § 4-506(c)(1)(ii)
<b>Massachusetts</b> MASS. GEN. LAWS CH. 209A, § 3	Attempting to cause or causing physical harm, placing another in fear of imminent serious physical harm, causing another to engage involuntarily in sexual relations by force, threat or duress. MASS. GEN. LAWS CH. 209A, § 1	Unspecified, but see caselaw at night suggesting preponderance of the evidence.  Preponderance of the Evidence. MASS. GEN. LAWS CH. 209A, § 3(d) (CHILD CUSTODY)	Annotations to the Code state: "Although it is not expressly stated in G.L. c. 209A, it follows from custom and practice in civil cases that a G.L. c. 209A plaintiff must make a case for relief by a preponderance of the evidence. The circumstances of a G.L. c. 209A hearing do not require that a higher burden of proof be met." <i>Enzado v. Enzado</i> , 420 Mass. 592, 595, 651 N.E.2d 1206, 1210 (1995).  [A]llowing the plaintiff temporary custody of a minor child, provided, however, that in any case brought in the probate and family court a finding by such court by a preponderance of the evidence that a pattern or serious incident of abuse, as defined in section 31A of chapter 208, toward a parent or child has occurred shall create a rebuttable presumption that it is not in the best interests of the child to be placed in sole custody, shared legal custody or shared physical custody with the abusive parent. MASS. GEN. LAWS CH. 209A, § 3(d).
<b>Michigan</b> MICH. COMP. LAWS SERV. § 600.2950	Entering into premises, assault, attacking, beating, molesting, wounding, threatening to kill or physically injure a named individual; unlawful removal of children from the custodial adult; purchasing or possessing a firearm; interference with freedom; putting someone in fear of physical harm; any other specific act/conduct imposing upon or interfering with personal liberty or causes a reasonable fear of violence. MICH. COMP. LAWS SERV. § 600.2950(1)	Discretion of the Court Based on the Finding of "Reasonable Cause" MICH. COMP. LAWS SERV. § 600.2950(4)	"The court shall issue a personal protection order under this section if the court determines that there is reasonable cause to believe that the individual to be restrained or enjoined may commit 1 or more of the acts listed in subsection (1)." MICH. COMP. LAWS SERV. § 600.2950(4)
<b>Minnesota</b> MINN. STAT. ANN. § 518B.01	Physical harm, bodily injury or assault; infliction of fear of imminent physical harm, bodily injury, assault, terrorist threats, criminal sexual conduct or interference with an emergency call. MINN. STAT. ANN. § 518B.01, subd. (2)(a)	Unspecified, but see caselaw at night suggesting sufficient evidence.	"A district court's broad discretion in crafting and issuing orders for protection has been consistently recognized by this court. This court will reverse a district court's decision to issue an order for protection under the Minnesota Domestic Abuse Act if it lacks sufficient evidentiary support."

Prepared by the University of Baltimore School of Law Family Law Clinic; updated by the American Bar Association Commission on Domestic Violence <http://www.abanet.org/domviol>

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## Standards of Proof for Domestic Violence Civil Protection Orders (CPOs) By State

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CPO Statute	Definition of Domestic Violence (DV)	Evidentiary Standard?	Language referring to Evidentiary Standard
			<i>McIntosh v. McIntosh</i> , 740 N.W.2d 1 (Minn. Ct. App. 2007)
<b>Mississippi</b> MISS. CODE ANN. § 93-21-7	Occurrence of one or more of the following acts between family or household members who reside together or who formerly resided together or between current dating partners: attempting to cause or intentionally, knowingly or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon, placing by physical menace or threat, another person in fear of imminent serious bodily injury, criminal sexual conduct against a minor, stalking, sexual offenses, or cyber stalking. MISS. CODE ANN. § 93-21-3(a)	"Preponderance of the Evidence" MISS. CODE ANN. § 93-21-11(1)	"Within ten (10) days of filing a petition under the provisions of this chapter, the court shall hold a hearing, at which time the petitioner must prove the allegation of abuse by a preponderance of the evidence" MISS. CODE ANN. § 93-21-11(1)
<b>Missouri</b> MO. REV. STAT. § 455.020	Actual acts, attempts or threats of the following: assault, battery, coercion, harassment (following someone in a public place or places, peering in the window or lingering outside the residence of another), sexual assault, unlawful imprisonment. MO. REV. STAT. § 455.010(1)	"Preponderance of the Evidence" MO. REV. STAT. § 455.040(f)	"At the hearing, if the petitioner has proved the allegation of abuse or stalking by a preponderance of the evidence, the court shall issue a full order of protection for a time the court deems appropriate." MO. REV. STAT. § 455.040(f)
<b>Montana</b> MONT. CODE ANN. § 40-15-201	Assault, aggravated assault, intimidation, partner or family member assault, criminal endangerment, negligent endangerment, assault on a minor, assault with a weapon, unlawful restraint, kidnapping, aggravated kidnapping, or arson. MONT. CODE ANN. § 40-15-102(1)	Discretion of the Court Based on the Finding of "Good Cause" MONT. CODE ANN. § 40-15-202(1)	"Upon a review of the petition and a finding that the petitioner is in danger of harm if the court does not act immediately, the court shall issue a temporary order of protection that grants the petitioner appropriate relief." MONT. CODE ANN. § 40-15-201(2)  "At the hearing, the court shall determine whether good cause exists for the temporary order of protection to be continued, amended, or made permanent." MONT. CODE ANN. § 40-15-202(1)  "The court may, on the basis of the respondent's history of violence, the severity of the offense at issue, and the evidence presented at the hearing, determine that to avoid further injury or harm, the petitioner needs permanent protection. The court may order that the order of protection remain in effect permanently." MONT. CODE ANN. § 40-15-204(1)



## Standards of Proof for Domestic Violence Civil Protection Orders (CPOs) By State

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CPO Statute	Definition of Domestic Violence (DV)	Evidentiary Standard?	Language referring to Evidentiary Standard
<b>Nebraska</b> NEB. REV. STAT. ANN. § 42-924	Attempting to cause or intentionally and knowingly causing bodily injury with or w/o a dangerous instrument; placing, by physical menace, another person in fear of imminent bodily injury, or engaging in sexual contact or sexual penetration without consent. NEB. REV. STAT. ANN. § 42-903(1)	Discretion of the Court Based on the Finding of "Reasonable Grounds" NEB. REV. STAT. ANN. § 42-925	"Any order issued under subsection (1) of section 42-924 may be issued ex parte to the respondent if it reasonably appears from the specific facts included in the affidavit that the petitioner will be in immediate danger of abuse before the matter can be heard on notice." NEB. REV. STAT. ANN. § 42-925
<b>Nevada</b> NEV. REV. STAT. ANN. § 33.018	Battery, assault, compelling another person by force or threat of force to perform an act from which he/she has a right to refrain or to refrain from an act which he/she has a right to perform; sexual assault; harassment which shall include but not limited to: stalking, arson, trespassing, larceny, destruction of private property, carrying a concealed weapon, injuring or killing an animal; false imprisonment, unlawful or forcible entry into another's residence if there is reasonable foreseeable harm. NEV. REV. STAT. ANN. § 33.018(1)	Discretion of the Court NEV. REV. STAT. ANN. § 33.020(1)	"If it appears to the satisfaction of the court from specific facts shown by a verified application that an act of domestic violence has occurred or there exists a threat of domestic violence, the court may grant a temporary or extended order." NEV. REV. STAT. ANN. § 33.020(1)
<b>New Hampshire</b> N.H. REV. STAT. ANN. § 173-B:3	Actually or attempts to do any of the following to the victim: assault, reckless conduct, criminal threat, sexual assault, interference with freedom, destruction of property, unauthorized entry, harassment. N.H. REV. STAT. ANN. § 173-B:1(f)	"Preponderance of the Evidence" N.H. REV. STAT. ANN. § 173-B:5(f)	"Upon a showing of abuse of the plaintiff by a preponderance of the evidence, the court shall grant such relief as is necessary to bring about a cessation of abuse." N.H. Rev. Stat. § 173-B:5(f)
<b>New Jersey</b> N.J. STAT. ANN. §2C:25-29	Perpetration of one or more of the following by an adult or emancipated minor on the victim: homicide, assault, terroristic threats, kidnapping, criminal restraint, false imprisonment, sexual assault, criminal sexual contact, lewdness, criminal mischief, burglary, criminal trespass, harassment, stalking. N.J. STAT. ANN. §2C:25-19(a)	"Preponderance of the Evidence" N.J. STAT. ANN. §2C:25-29(a)	"At the hearing the standard for proving the allegations in the complaint shall be by a preponderance of the Evidence" N.J. STAT. ANN. §2C:25-29(a)
<b>New Mexico</b> N.M. STAT. ANN. § 40-13-3	Any incident by a household member against the other which results in physical harm, severe emotional stress, bodily injury or assault, threat causing imminent fear of bodily injury, criminal trespass, criminal damage to property, repeatedly driving by a residence or work place, phone harassment, stalking, harassment, harm or threatened harm to children in all the manners as set above, and any incident of stalking or sexual assault whether committed by a household member or not. N.M. STAT. ANN. § 40-13-2(c)	Discretion of the Court Based on the Finding of "Reasonable Grounds" or "Probable Cause" N.M. STAT. ANN. §§ 40-13-3, 40-13-4, 6	"An ex parte protective order may be issued if "the court finds reasonable grounds to believe that the alleged victim or the alleged victim's child is in immediate danger of domestic abuse following an incident of domestic abuse." N.M. STAT. ANN. § 40-13-3(A)  "[I]f the court shall immediately grant an ex parte temporary order of protection without bond if there is probable cause from the specific facts shown by the affidavit or by the petition to give the judge reason to believe that an act of domestic violence has occurred." N.M. STAT. ANN. § 40-13-4(A)

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CPO Statute	Definition of Domestic Violence (DV)	Evidentiary Standard?	Language referring to Evidentiary Standard
			Further, "the order may be extended for good cause upon motion of the protected party for an additional period of time not to exceed six months." N.M. STAT. ANN. § 40-13-6(C)
<b>New York</b> N.Y. FAM. CT. ACT § 842	Assault, attempted assault by a respondent on his/her current or former spouse, parent, child or other member of the same family or household or engaged in disorderly conduct, harassment, stalking, menacing or reckless endangerment toward any such person. N.Y. FAM. CT. ACT § 812(1)	Unspecified, but see caselaw at right suggesting "Preponderance of the Evidence"	"In order to warrant issuance of protective order under CLS Family Ct Act Art 8, allegations must be supported by fair preponderance of Evidence" <i>Machukas v. Wagner</i> , 246 A.D.2d 840, 667 N.Y.S.2d 817 (1989).  "Family Court's findings of harassment and attempted assault were supported by preponderance of evidence..." <i>Quintana v Quintana</i> , 237 App Div 2d 130, 654 N.Y.S.2d 27 (1 <sup>st</sup> Dept, 1997).
<b>North Carolina</b> N.C. GEN. STAT. § 50B-3	The commission of one or more of the following acts by a person who the aggrieved party has had a personal relationship with or to that person's minor child: attempting to or intentionally causing bodily injury, placing the victim in fear of imminent serious bodily injury or continuous harassment which gives rise to substantial emotional distress, and rape or a sexual offense. N.C. GEN. STAT. § 50B-1(a)	Discretion of the Court N.C. GEN. STAT. § 50B-3  but see caselaw at right suggesting "Competent or Sufficient Evidence"	"If the court... finds that an act of domestic violence has occurred, the court shall grant a protective order restraining the defendant from further acts of domestic violence." N.C. GEN. STAT. § 50B-3(a)  "There was no competent evidence presented that defendant caused or attempted to cause bodily injury or committed any sex offense against a minor child in plaintiff's custody, or that defendant placed a member of plaintiff's family in fear of (1) imminent serious bodily injury or (2) continued harassment that rose to such a level as to inflict substantial emotional distress. Therefore, the trial court's conclusions of law that defendant committed acts of domestic violence against plaintiff's minor children were not supported by sufficient findings of fact, and the trial court erred in issuing the DVPO." <i>Burress v. Burress</i> , 672 S.E.2d 732, 735 (N.C. Ct. App. 2009)
<b>North Dakota</b> N.D. CENT. CODE § 14-07.1-02	Actual or the infliction of fear of physical harm, bodily injury, sexual activity compelled by physical force, assault, not committed in self defense, on the complaining family or household members. N.D. CENT. CODE § 14-07.1-01(2)	Discretion of the Court N.D. CENT. CODE § 14-07.1-02(4)  but see caselaw at right, suggesting "Preponderance of the Evidence"	"Upon a showing of actual or imminent domestic violence, the court may enter a protection order...." N.D. CENT. CODE § 14-07.1-02(4)  "[p]arty seeking domestic violence protection order must prove actual or imminent domestic violence by a preponderance of the evidence." <i>Ficklin v. Ficklin</i> , 2006 ND 40, 710 N.W.2d 387 (2006).

CPO Statute	Definition of Domestic Violence (DV)	Evidentiary Standard?	Language referring to Evidentiary Standard
<p><b>Ohio</b> OHIO REV. CODE ANN. § 3113.31</p>	<p>Attempting to cause or recklessly causing bodily injury, placing another person by the threat of force in fear of imminent serious physical harm, committing an act with respect to a child that would result in child abuse, committing a sexually oriented offense. OHIO REV. CODE ANN. § 3113.31(A)(1)</p>	<p>Discretion of the Court Based on the Finding of "Good Cause" OHIO REV. CODE ANN. § 3113.31(D)(1)  *Preponderance of the Evidence OHIO REV. CODE ANN. § 3113.31(B) (FOR MODIFICATION OR TERMINATION OF AN EXISTING PROTECTION ORDER)</p>	<p>The court, for good cause shown at the ex parte hearing, may enter any temporary orders that the court finds necessary to protect the family or household member from domestic violence. Immediate and present danger of domestic violence to the family or household member constitutes good cause for purposes of this section. Immediate and present danger includes, but is not limited to, situations in which the respondent has threatened the family or household member with bodily harm, in which the respondent has threatened the family or household member with a sexually oriented offense, or in which the respondent previously has been convicted of or pleaded guilty to an offense that constitutes domestic violence against the family or household member. OHIO REV. CODE ANN. § 3113.31(D)(1)  The moving party has the burden of proof to show, by a preponderance of the evidence, that modification or termination of the protection order or consent agreement is appropriate because either the protection order or consent agreement is no longer needed or because the terms of the original protection order or consent agreement are no longer appropriate. OHIO REV. CODE ANN. § 3113.31(E)(8)(b)  sufficient evidence supported the trial court's issuance of a civil protection order based on the finding that the mother was in fear of imminent serious physical harm and legitimately feared that the father would abscond with the child to Syria, thereby depriving her of her parental rights concerning the child. The mother's testimony provided competent, credible evidence to support a finding that that the father posed a danger of domestic violence under Ohio Rev. Code Ann. § 3113.31(A)(1). <i>Warden v. Altanich</i>, 158 Ohio App. 3d 325, 815 N.E.2d 712 (2004).</p>
<p><b>Oklahoma</b> OKLA. STAT. ANN. TIT. 22, § 60.2</p>	<p>Any act of physical harm, or the threat of imminent physical harm committed by an adult, emancipated minor or minor child (13 years of age or older) against another adult, emancipated minor or minor child who are family or household members or who are or where in a dating relationship. OKLA. STAT. ANN. TIT. 22, § 60.1(f)</p>	<p>Discretion of the Court Based on the Finding of "Sufficient Grounds" OKLA. STAT. ANN. TIT. 22, § 60.4</p>	<p>"[T]he court shall schedule a full hearing on the petition, if the court finds sufficient grounds within the scope of the Protection from the Domestic Abuse Act stated in the petition to hold such a hearing." OKLA. STAT. ANN. TIT. 22, § 60.4(B)(1)  *At the hearing, the court may impose any terms and conditions in the protective order that the court reasonably believes are necessary to bring about the cessation of domestic abuse against the victim or stalking or harassment of the victim or the victim's immediate family...." OKLA. STAT. ANN. TIT. 22, § 60.4(C)(1)</p>



## Standards of Proof for Domestic Violence Civil Protection Orders (CPOs) By State

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CPO Statute	Definition of Domestic Violence (DV)	Evidentiary Standard?	Language referring to Evidentiary Standard
		but see caselaw at right, suggesting "Preponderance of the Evidence"	"On the whole, th[e] [Domestic Abuse] Act merely creates an additional framework through which the court may exercise its long recognized equitable power to grant restraining and injunctive orders in extraordinary circumstances. Trial court did not err when it used the "preponderance of the evidence" test at the November 19 trial." <i>Marquette v. Marquette</i> , 686 P.2d 990, 994 (Okla. Civ. App. 1984).
<b>Oregon</b> OR. REV. STAT. §§ 107.710	The occurrence of one or more of the following acts between family or household members: attempting to cause or intentionally, knowingly or recklessly causing bodily injury; intentionally, knowingly or recklessly placing another in fear of imminent bodily injury and causing another to engage in involuntary sexual relations by force or threat of force. OR. REV. STAT. § 107.705(1)	"Preponderance of the Evidence" OR. REV. STAT. § 107.710(2)	"The petitioner has the burden of proving a claim under ORS 107.700 to 107.735 [the Family Abuse Prevention Act] by a preponderance of the Evidence" OR. REV. STAT. § 107.710(2)
<b>Pennsylvania</b> 23 PA. STAT. ANN. § 6106	Attempting to cause or intentionally, knowingly or recklessly causing ( with or without a weapon): serious bodily injury, rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest; placing another in reasonable fear of imminent serious bodily injury; false imprisonment; physically or sexually abusing minor children; knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following the person, without proper authority under circumstances which place the person in reasonable fear of bodily injury. 23 PA. STAT. ANN. § 6102	"Preponderance of the Evidence" 23 PA. STAT. ANN. § 6107(a)	"[A] hearing shall be held before the court, at which the plaintiff must prove the allegation of abuse by a preponderance of the Evidence" 23 PA. STAT. ANN. § 6107 (a)
<b>Rhode Island</b> R.I. GEN. LAWS § 8-8-1-3	Any of the following acts committed by a current or former family member, dating partner, or cohabitant: attempting to cause or causing physical harm; inducing fear of imminent serious physical harm; inducing involuntary engagement in sexual relations by force, threat of force, or duress; stalking or cyberstalking. R.I. GEN. LAWS § 8-8-1-1(3)	Discretion of the Court Based on the Finding of "Good Cause" R.I. GEN. LAWS § 8-8-1-4(a)(2)(iii)	Temporary/ex parte protection order may be extended "for good cause shown and after hearing of arguments by the parties or counsel...for an additional period." R.I. GEN. LAWS § 8-8-1-4(e)(2)(iii)
<b>South Carolina</b> S.C. CODE ANN. § 20-4-40	Physical harm, bodily injury, assault, threat of physical harm, any sexual offences committed against or by a family or household member. S.C. CODE ANN. § 20-4-20(a)	"Preponderance of the Evidence" S.C. CODE ANN. § 20-4-50(a)	"[T]he court may, for good cause shown,...issue an order of protection if the petitioner proves the allegation of abuse by a preponderance of the Evidence A prima facie showing of immediate and present danger of bodily injury, which may be verified by supporting affidavits, constitutes good cause for purposes of this section." S.C. CODE ANN. § 20-4-50(a)

Prepared by the University of Baltimore School of Law Family Law Clinic; updated by the American Bar Association Commission on Domestic Violence <http://www.abanet.org/domvio/>

We are always grateful to receive corrections and updates at [abacdvt@abanet.org](mailto:abacdvt@abanet.org)

The law is constantly changing! Please independently confirm the data you find here.



## Standards of Proof for Domestic Violence Civil Protection Orders (CPOs) By State

6/2009

CPO Statute	Definition of Domestic Violence (DV)	Evidentiary Standard?	Language referring to Evidentiary Standard
<b>South Dakota</b> S.D. CODIFIED LAWS § 25-10-3	Physical harm, bodily injury, attempts to cause physical harm or bodily injury, infliction of fear of imminent physical harm or bodily injury between family or household members, any violation of a TPO, and any crime committed b/w family or household members. S.D. CODIFIED LAWS § 25-10-1(c)	"Preponderance of the Evidence" S.D. CODIFIED LAWS § 25-10-5	"Upon notice and a hearing, if the court finds by a preponderance of the evidence that domestic abuse has taken place, the court may provide relief." S.D. CODIFIED LAWS § 25-10-5
<b>Tennessee</b> TENN. CODE ANN. § 36-3-605	Inflicting or attempting to inflict physical injury on an adult or minor intentionally, placing an adult or minor in fear of physical harm, physical restraint, or malicious damage to the personal property of the abused party, and inflicting or attempting to inflict harm on pets. TENN. CODE ANN. § 36-3-601(1)	Discretion of the Court Based on the Finding of "Good Cause" TENN. CODE ANN. § 36-3-605(a) (FOR EX PARTE ORDER)  "Preponderance of the Evidence" TENN. CODE ANN. § 36-3-605(b) (FOR FINAL ORDER)	"[T]he courts may immediately, for good cause shown, issue an ex parte order of protection. An immediate and present danger of abuse to the petitioner shall constitute good cause...." TENN. CODE ANN. § 36-3-605(a)  "[A] hearing shall be held, at which time the court shall either dissolve any ex parte order that has been issued, or shall, if the petitioner has proved the allegation of domestic abuse, stalking or sexual assault by a preponderance of the evidence, extend the order of protection for a definite period of time...." TENN. CODE ANN. § 36-3-605(b)
<b>Texas</b> TEX. FAM. CODE ANN. § 95.001	An act by a family or household member against another family or household member, intended to result in physical harm, bodily injury, or sexual assault, is a threat that reasonably places a member of the family or household in fear of physical harm, bodily injury, or sexual assault, or a course of conduct that causes a member of the family or household to believe that the member of the family or household is in danger of physical harm, bodily injury, or sexual assault. TEX. FAM. CODE ANN. § 95.001	Discretion of the Court TEX. FAM. CODE ANN. § 95.001(b)	"If the court finds that family violence has occurred and that family violence is likely to occur in the future, the court: (1) shall render a protective order." TEX. FAM. CODE ANN. § 95.001(b)
<b>Utah</b> UTAH CODE ANN. § 78B-7-103	Intentionally or knowingly causing or attempting to cause a cohabitant physical harm or intentionally or knowingly placing a cohabitant in reasonable fear of imminent physical harm. UTAH CODE ANN. § 78B-7-102(1)	Unspecified  but see caselaw at right, suggesting "Preponderance of the Evidence"	"The trial court, after conducting several hearings concerning Bailey's petition, concluded by a preponderance of the evidence that Bayles had "been stalking [Bailey] by intentionally or knowingly engaging in a course of conduct directed at [Bailey] that would cause a reasonable person to suffer emotional distress herself." <i>Bailey v. Bayles</i> , 18 P.3d 1129, 1130 (Utah Ct. App. 2001)
<b>Vermont</b> VT. STAT. ANN. TIT. 15, § 1103	The occurrence of one or more of the following acts between family or household members: attempting to cause or causing physical harm, placing another in fear of imminent serious physical harm, child abuse, stalking, and sexual assault. VT. STAT. ANN. TIT. 15, § 1101(c)	"Preponderance of the Evidence" VT. STAT. ANN. TIT. 15, § 1103(b)	"The plaintiff shall have the burden of proving abuse by a preponderance of the Evidence" VT. STAT. ANN. TIT. 15, § 1103(b)

## Standards of Proof for Domestic Violence Civil Protection Orders (CPOs) By State

6/2009

CPO Statute	Definition of Domestic Violence (DV)	Evidentiary Standard?	Language referring to Evidentiary Standard
<b>Virginia</b> VA. CODE ANN. § 16.1-279.1	Domestic violence is referred to as Family abuse. It means any act involving violence, force or threat including but not limited to, any forceful detention, which results in bodily injury or places one in reasonable apprehension of bodily injury. VA. CODE ANN. § 16.1-228	Unspecified, but see caselaw at right suggesting Discretion of the Court	"In cases of family abuse, the court may issue a protective order to protect the health and safety of the petitioner and family or household member of the petitioner. VA. CODE ANN. § 16.1-279.1(A)  Order may be issued if the court finds the petitioner in "reasonable fear of immediate, serious bodily harm." <i>Martin v. Martin</i> , No. 2740-01-2, 2002 Va. App. LEXIS 350 (Ct. of Appeals, June 18, 2002)
<b>Washington</b> WASH. REV. CODE ANN. §§ 26.50.020	Physical harm, bodily injury, assault or the infliction of fear or imminent physical harm, bodily injury or assault between family or household members; sexual assault of one family or household member by another; stalking of one family or household member by another family or household member. WASH. REV. CODE § 26.50.010(f)	Unspecified  "Preponderance of the Evidence" WASH. REV. CODE § 26.50.060(3) (TO DEFEAT PETITION FOR RENEWAL)	"If the petitioner has petitioned for relief on his or her own behalf or on behalf of the petitioner's family or household members or minor children, and the court finds that the respondent is likely to resume acts of domestic violence against the petitioner, when the order expires the court may enter a permanent order of protection." WASH. REV. CODE § 26.50.060(2)  "The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume acts of domestic violence against the petitioner or the petitioner's children or family or household members when the order expires." WASH. REV. CODE § 26.50.060(3)
<b>West Virginia</b> W.VA. CODE § 48-27-301	Between family or household members, attempting to cause or interfere with, knowingly or recklessly causing physical harm to another person without dangerous excuse; occupying, placing and threatening reasonable apprehension of physical harm; creating fear of physical harm by harassment, psychological abuse or threatening acts; committing either sexual assault or sexual abuse; holding, confining, detaining or abducting another person against that person's will. W. VA. CODE § 48-27-202	"Preponderance of the Evidence" W. VA. CODE § 48-27-301(a)	"Upon final hearing, the court shall enter a protective order if it finds, after hearing the evidence, that the petitioner has proved the allegations of domestic violence by a preponderance of the Evidence" W. VA. CODE § 48-27-301(a)
<b>Wisconsin</b> WIS. STAT. § 813.12	Domestic abuse is when one or more of the following occurs between adult family or household members or dating partners: intentional infliction of physical pain, physical injury or illness; intentional impairment of victim's physical condition; property destruction and threat to engage in any of the mentioned acts; sexual contact or intercourse w/o consent. WIS. STAT. § 813.12(1)(am)	Discretion of the Court Based on the Finding of "Reasonable Grounds" WIS. STAT. § 813.12(3)(a)(2)	"The judge or circuit court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner." WIS. STAT. § 813.12(3)(a)(2)



## Standards of Proof for Domestic Violence Civil Protection Orders (CPOs) By State

6/2009

CPO Statute	Definition of Domestic Violence (DV)	Evidentiary Standard?	Language referring to Evidentiary Standard
<p><b>Wyoming</b> WYO. STAT. ANN. § 35-21-103</p>	<p>Physical abuse, threat or attempt thereof or acts which unreasonably restrain the personal liberty of any household member, placing a household member in reasonable fear of imminent physical harm or causing a household member to engage involuntarily in sexual activity by force, threat of force or duress. WYO. STAT. ANN. § 35-21-102(a)(iii)</p>	<p>Unspecified</p>	<p>"Upon the filing of a petition for order of protection, the court shall: (i) Immediately grant an ex parte temporary order of protection if it appears from the specific facts shown by the affidavit or by the petition that there exists a danger of further domestic abuse..." WYO. STAT. ANN. § 35-21-104(a)(i)</p> <p>"Upon finding that an act of domestic abuse has occurred, the court shall enter an order of protection ordering the respondent household member to refrain from abusing the petitioner or any other household member." WYO. STAT. ANN. § 35-21-105(a)</p>

## OFFICE RECEPTIONIST, CLERK

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Thursday, May 26, 2016 12:10 PM  
**To:** 'Jessica Lang'  
**Cc:** Gail Nunn  
**Subject:** RE: Supplemental Breif of Respondent, Case No. 92631-0

Received 5/26/2016.

Supreme Court Clerk's Office

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**Sent:** Thursday, May 26, 2016 11:51 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** Gail Nunn <Gail.Nunn@onglaw.com>  
**Subject:** Supplemental Breif of Respondent, Case No. 92631-0

Greetings,

Attached please find Respondent, Cynthia Aiken's Supplemental Brief hereby being submitted for consideration by the Court.

1. Case Name: David W. Aiken Appellant vs. Cynthia L. Aiken, Respondent
2. Case No. 92631-0
3. Filed by Gail B. Nunn, attorney for Cynthia Aiken, WSBA No 16827, [gail.nunn@onglaw.com](mailto:gail.nunn@onglaw.com)

Please confirm receipt.

Sincerely,

*Jessica E. Lang*  
*Paralegal to Gail B. Nunn*

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