

CHAPTER 9

Civil Protection Orders

I. Introduction

The effects of sexual assault are devastating. As the Washington State Legislature has acknowledged, “Sexual assault is the most heinous crime against another person short of murder. Sexual assault inflicts humiliation, degradation, and terror on victims.”¹ This is especially true if the perpetrator continues to have contact with the victim after the assault.

Prior to 2006, civil protection orders were not available to many sexual assault victims. Their options consisted of petitioning the court for a Domestic Violence Protection Order or an Antiharassment Protection Order. However, based on the eligibility requirements for these two orders, victims who were assaulted one time by someone outside their family or household were unable to meet the requirements of either protection order. This gap in protection was significant because many sexual assaults are perpetrated by acquaintances or persons known to, but not related to, the victim.²

Passage of 7.90 RCW, the Sexual Assault Protection Order Act³, filled the gap that had existed for many sexual assault victims by providing them with an avenue to obtain “stay away” protection from the alleged perpetrator. Currently, twenty-eight other states and the District of Columbia have civil protection orders for sexual assault victims.⁴

This chapter is intended to assist the court in crafting effective orders and in developing effective and efficient procedures for handling cases of sexual violence in order to uphold the rights of all parties involved.

¹ RCW 7.90.005 <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.005>

² Lucy Berliner, David Fine and Danna Moore, “Sexual Assault Experiences and Perceptions of Community Response to Sexual Assault: A Survey of Washington State Women” (Seattle: Harborview Medical Center 2001)

³ <http://app.leg.wa.gov/RCW/default.aspx?cite=7.90>

⁴ Other states with civil sexual assault protection orders are: Alaska, California, Colorado, Connecticut, District of Columbia, Florida, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Vermont, Virginia, Wisconsin, and Wyoming. American Bar Association Commission on Domestic Violence. “Sexual Assault Civil Protection Orders (CPOs) By State.” April 2015 http://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/Charts/SA%20CPO%20Final%202015.authcheckdam.pdf

II. Chapter Overview

A. Protection Orders Available in Washington

Washington statutes provide for the following protection orders:

1. sexual assault protection orders- civil & criminal (chapter 7.90 RCW)
<http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90>
2. domestic violence protection orders (chapter 26.50 RCW)
<http://apps.leg.wa.gov/rcw/default.aspx?cite=26.50>
3. antiharassment protection orders (chapter 10.14 RCW)
<http://apps.leg.wa.gov/rcw/default.aspx?cite=10.14>
4. vulnerable adult protection orders (chapter 74.34 RCW)
<http://apps.leg.wa.gov/rcw/default.aspx?cite=74.34>
5. stalking protection orders (chapter 7.92 RCW)
<http://apps.leg.wa.gov/rcw/default.aspx?cite=7.92>
6. extreme risk protection orders (chapter 7.94 RCW)
<http://app.leg.wa.gov/RCW/default.aspx?cite=7.94>
7. criminal no-contact orders
8. domestic relations restraining orders
(RCW 26.09.060 and 26.09.300)
<http://apps.leg.wa.gov/rcw/default.aspx?cite=26.09.060>
<http://apps.leg.wa.gov/rcw/default.aspx?cite=26.09.300>
(RCW 26.10.040)
<http://apps.leg.wa.gov/rcw/default.aspx?cite=26.10.040>
(RCW 26.44.063)
<http://apps.leg.wa.gov/rcw/default.aspx?cite=26.44.063>
(RCW 26.26.130)
<http://apps.leg.wa.gov/rcw/default.aspx?cite=26.26.130>

B. Scope of this Chapter and Cross-References

This chapter is primarily concerned with civil sexual assault protection orders (SAPOs) issued pursuant to chapter 7.90 RCW. Although the policy concerns addressed in this chapter apply whenever a court is considering issues of sexual violence, the procedural discussions contained in this chapter apply only to orders initially obtained pursuant to chapter 7.90 RCW. Court-initiated SAPOs that are issued in conjunction with a criminal case are discussed in Chapters 4 and 7.

Domestic violence protection orders are discussed in detail in Chapter 8 of Washington's *Domestic Violence Manual for Judges* (2016) and guidelines for domestic violence protection and antiharassment protection orders are discussed in Appendix J of the manual. The *Domestic Violence Manual for Judges* is available at <http://www.courts.wa.gov/index.cfm?fa=home.contentDisplay&location=manuals/domViol/index>

Because the Sexual Assault Protection Order Act incorporates RCW 26.50.110 by reference with respect to enforcement of SAPOs, please refer to Chapter 8, pp. 28-34, of Washington's *Domestic Violence Manual for Judges* for a detailed discussion of civil and criminal enforcement.

Appendix A to this chapter contains a chart which summarizes the significant attributes of the types of civil orders available to alleged sexual assault victims. Appendix B to this chapter contains a bench card for judges conducting SAPO hearings. Appendix C to this chapter contains a bench card for judges related to advancing procedural justice at protection order hearings.

C. Distinction Between “Ex Parte” and “Final” Orders

“Sexual assault protection order” is defined as an ex parte temporary order or a final order⁵, which include remedies authorized by RCW 7.90.090. This chapter will distinguish between the two types of orders as follows:

1. Ex parte orders

RCW 7.90.110 & .120⁶ provide for the issuance of an “ex parte temporary sexual assault protection order.” Because the distinguishing characteristic of these orders is not their temporary nature, but the fact that they may be issued ex parte, they will be referred to throughout this chapter as “ex parte orders.”

2. Final orders

RCW 7.90.090⁷ provides for the issuance of a “sexual assault protection order” upon notice to the respondent and after a hearing. References to these orders as “permanent orders” are misleading because they may be either “effective for a fixed period of time or be permanent”⁸. Instead, orders issued following notice and a hearing will be referred to throughout this chapter as “final orders.”

⁵ <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.010>

⁶ <http://app.leg.wa.gov/RCW/default.aspx?cite=7.90.110>;
<http://app.leg.wa.gov/RCW/default.aspx?cite=7.90.120>

⁷ <http://app.leg.wa.gov/RCW/default.aspx?cite=7.90.090>

⁸ RCW 7.90.120(2)

III. Standard Forms

A. Statutory Authority

RCW 7.90.180 directs the Administrative Office of the Courts to develop standard forms and instructional brochures to be available in all court clerk offices. These forms are available at: <http://www.courts.wa.gov/forms/?fa=forms.contribute&formid=65>

B. Use of Mandatory Forms Ensures that the Orders Will Be Enforceable

Courts should use the standard Washington State forms developed by the Administrative Office of the Courts in order to meet all state and federal requirements regarding sexual assault cases. The Sexual Assault Protection Order, SA 3.015,⁹ is a mandatory form. Law enforcement officers, judicial and criminal information gathering agencies, and other courts are familiar with and rely upon the standard forms.

If the court enters a sexual assault protection order other than the mandatory standard order, the standard order should be attached to and/or incorporated by reference in the order entered to ensure that the order contains all necessary language, including in a conspicuous location of the following required statement:

A knowing violation of this sexual assault protection order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order.¹⁰

A protection order that does not contain the above language is legally insufficient and a violation of the order cannot be criminally enforced.¹¹

C. List of Current Forms¹²

SA 1.015	Petition for Sexual Assault Protection Order (2018)
SAi-1.015	Instructions for Petition for Sexual Assault Protection Order WPF AllCases 01.0400 Law Enforcement Information Sheet (2018)
FL All Family 001	Confidential Information (2016)
FL All Family 002	Attachment to Confidential Information (2016)

⁹ SA 3.015 is available at <http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=65>

¹⁰ RCW 7.90.130(e)(3) <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.130>

¹¹ See *State v. Marking*, 100 Wn. App. 506, 997 P.2d 461(2000), review denied, 141 Wn.2d 1026 (2000) (statutory language not contained in criminal no-contact order)

¹² These forms are available at: <http://www.courts.wa.gov/forms/?fa=forms.contribute&formid=65>

SA 2.015	Temporary Sexual Assault Protection Order and Notice of Hearing (2018)
SAi-2.015	Instructions for Temporary Sexual Assault Protection Order and Notice of Hearing (2017)
SA 3.015	Sexual Assault Protection Order (2017)
SAi-3.015	Instructions for Sexual Assault Protection Order (2017)
SA 3.070	Appendix A: School Transfer (2006)
SA 4.020	Return of Service (2017)
WPF All Cases 02-010	Motion for Surrender of Weapons (2018)
WPF All Cases 02-030	Order to Surrender Weapons Issued Without Notice (2018)
WPF All Cases 02-040	Order Re Motion for Surrender of Weapons (2018)
WPF All Cases 02-050	Order to Surrender Weapons (2018)
WPF All Cases 02-060	Proof of Surrender (2018)
WPF All Cases 02-065	Receipt for Surrendered Weapons and Concealed Pistol License (2018)
WPF All Cases 02-070	Declaration of Non-Surrender (2018)
All Cases 02-080	Motion and Declaration for Order to Release Weapons (2014)
All Cases 02-090	Order to Release Weapons (2018)
SA 5.010	Reissuance of Temporary Sexual Assault Protection Order and Notice of Hearing (2006)
SA 5.020	Order Transferring Sexual Assault Protection Order Case and Setting Hearing (2006)
SA 5.030	Motion and Declaration for Renewal of Sexual Assault Protection Order (2017)
SA 5.040	Order Setting Hearing – Sexual Assault (2017)
SA 5.060	Order on Motion for Renewal of Sexual Assault Protection Order (2017)
WPF DV 6.020	Denial Order (2014)
SA 6.050	Respondent’s Petition to Reopen Temporary Sexual Assault Protection Order (2006)
SA 6.060	Order on Respondent’s Petition to Reopen Temporary Sexual Assault Protection Order (2006)
SA 7.010	Motion to Modify/Terminate Sexual Assault Protection Order (2017)
SA 7.025	Finding of Adequate Cause and Order for Hearing on Respondent’s Motion to Modify/Terminate Sexual Assault Protection Order (2017)
SA 7.030	Order Modifying/Terminating Sexual Assault Protection Order (2017)

SASTMT	Statement (2006)
SA 8.030	Judgment (2017)
SA 8.070	Declaration (2017)
SA 9.010	Motion and Declaration for Service of Summons by Publication (2013)
SA 9.020	Order for Service of Summons by Publication (2013)
SA 9.030	Summons (2013)
SA 9.040	Declaration of Mailing (2013)
SA 9.050	Motion and Declaration for Service of Summons by Mail (2013)
SA 9.060	Order for Service of Summons by Mail (2013)

IV. Statute of Limitations

There is no time limit within which a party must file for a SAPO; however, the petitioner must allege a reasonable fear of future dangerous acts in the petition.¹³ The Washington State Legislature recognizes that “[v]ictims who do not report the crime still desire safety and protection from future interactions with the offender.”¹⁴ Therefore, petitioners do not need to report a sexual assault to law enforcement to be eligible for a SAPO.

V. Issuance of a Sexual Assault Protection Order

A. Grounds

Any person may seek relief by filing a petition that alleges that he or she has been the victim of nonconsensual sexual conduct or nonconsensual sexual penetration committed by the respondent.¹⁵ The petition “shall be accompanied by an affidavit... stating the specific statements or actions made at the same time of the sexual assault or subsequently thereafter, which give rise to a reasonable fear of future dangerous acts, for which relief is sought.”¹⁶ The “specific statements or actions” are required to be separate from the sexual assault itself.¹⁷ In a recent opinion, the Washington State Supreme Court held that at the final sexual assault protection order hearing, the respondent may contest the sufficiency and validity of the petition and temporary order.¹⁸

¹³ RCW 7.90.020 <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.020>

¹⁴ RCW 7.90.005 <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.005>

¹⁵ RCW 7.90.040(1) <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.040>

¹⁶ RCW 7.90.020(1) <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.020>

¹⁷ *Roake v. Delman*, 194 Wn. App. 442, 377 P.3d 258 (2016)

¹⁸ *Roake v. Delman*, 408 P.3d 658 (2018)

B. Definitions

1. **“Nonconsensual”** means “lack of freely given agreement.”¹⁹ Note, however, that under the following circumstances, because of the age differential or the nature of the relationship between the petitioner and the respondent, the petitioner is considered to be incapable of freely giving agreement to sexual contact or sexual penetration as a matter of law:²⁰
 - a. The petitioner is under 12 years of age and the respondent is at least two years older (1st degree rape of a child)²¹
 - b. The petitioner is under 12 years of age and the respondent is at least three years older (1st degree child molestation)²²
 - c. The petitioner is 12 or 13 years of age, is not married to the respondent and the respondent is at least three years older (2nd degree rape of a child; 2nd degree child molestation)²³
 - d. The petitioner is 14 or 15 years of age, is not married to the respondent and the respondent is at least four years older (3rd degree rape of a child; 3rd degree child molestation)²⁴
 - e. The petitioner is a resident at a correctional facility and the respondent is an employee or contractor at the facility (1st and 2nd degree custodial sexual misconduct)²⁵
 - f. The petitioner is (i) at least 16 years of age and is a foster child of the respondent, or (ii) 16 or 17 years of age, not married to the respondent and the respondent is at least five years older than the petitioner and is in a supervisory position, or (iii) is a student at least 16 years of age but not more than 21 years of age and the respondent is a school employee at least five

¹⁹ RCW 7.90.010(1) <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.010>

²⁰ Such conduct is a “strict liability offense.” See *State v. Knutson*, 121 Wn.2d 766, 775, 854 P.2d 617 (1993) (purpose of these statutes is to “protect persons who, by virtue of their youth, are too immature to rationally or legally consent;”) also see *State v. Clemens*, 78 Wn. App. 458, 467, 898 P.2d 324 (1995) (citing *State v. Dodd*, 53 Wn. App. 178, 181, 765 P.2d 1337 (1989))

²¹ RCW 9A.44.073, <http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.073>

²² RCW 9A.44.083 <http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.083>

²³ RCW 9A.44.076, .086 <http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.076>;
<http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.086>

²⁴ RCW 9A.44.079, .089 <http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.079>;
<http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.089>

²⁵ RCW 9A.44.160, 170 <http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.160>;
<http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.170>

years older than the student (1st and 2nd degree sexual misconduct with a minor)²⁶

2. **“Sexual conduct”** is defined as:

- (a) Any intentional or knowing touching or fondling of the genitals, anus, or breasts, directly or indirectly, including through clothing;
- (b) Any intentional or knowing display of the genitals, anus, or breasts for the purposes of arousal or sexual gratification of the respondent;
- (c) Any intentional or knowing touching or fondling of the genitals, anus, or breasts, directly or indirectly, including through clothing, that the petitioner is forced to perform by another person or the respondent;
- (d) Any forced display of the petitioner’s genitals, anus, or breasts for the purposes of arousal or sexual gratification of the respondent or others;
- (e) Any intentional or knowing touching of the clothed or unclothed body of a child under the age of thirteen, if done for the purposes of sexual gratification or arousal of the respondent or others;
- (f) Any coerced or forced touching or fondling by a child under the age of thirteen, directly or indirectly, including through clothing, of the genitals, anus, or breasts of the respondent or others.²⁷

3. **“Sexual penetration”** is defined as:

...any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person, including but not limited to cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.²⁸

C. Parties to Sexual Assault Protection Order Cases

1. Petitioner

An alleged victim of nonconsensual sexual conduct or nonconsensual sexual penetration, *including a single incident*, may petition the court for a sexual assault protection order if they do not qualify for a domestic violence protection order under chapter 26.50

²⁶ RCW 9A.44.093, .096 <http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.093>; <http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.096>; see *State v. Hirschfelder*, 170 Wn.2d 536, 242 P.3d 876 (2010)

²⁷ RCW 7.90.010(1) <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.010>

²⁸ RCW 7.90.010(5)

RCW, are at least 16 years of age.²⁹ However, a petitioner who is in a dating relationship with the respondent, or a family or household member of the respondent, as defined by RCW 26.50.010, is entitled to seek a domestic violence protection order as provided in chapter 26.50 RCW, and is excluded from seeking a SAPO.³⁰

A parent or guardian may file for a SAPO on behalf of a minor child, a vulnerable adult, or any other adult who, because of age, disability, health, or inaccessibility, cannot file the petition.³¹ The court may appoint a guardian ad litem for the petitioner as it deems necessary.³²

2. Respondent

No guardian or guardian ad litem need be appointed on behalf of a respondent who is 16 or 17 years of age; however, the court may appoint a guardian ad litem for the respondent as it deems necessary. The appointment of a guardian ad litem shall be at no cost to either party.³³

See section XIV, D of this chapter for a discussion of the parties' Fifth Amendment rights against self-incrimination in the context of a SAPO hearing.

VI. Jurisdiction and Venue

A. Court Jurisdiction

1. Ex parte orders

Washington municipal, district, and superior courts have jurisdiction to issue ex-parte SAPOs pursuant to RCW 7.90.040(5) and domestic violence protection orders pursuant to RCW 26.50.020(5)³⁴

2. Final orders

Washington municipal, district and superior courts have concurrent jurisdiction to issue final orders in most situations. However, only superior courts have jurisdiction to issue final orders if:

- a. A superior court has exercised or is exercising jurisdiction over a proceeding under title 26 RCW or chapter 13.34 RCW involving the parties; or

²⁹ RCW 7.90.030 <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.030>; RCW 7.90.040 <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.040>

³⁰ RCW 7.90.030

³¹ RCW 7.90.030(b)

³² RCW 7.90.040

³³ Id.

³⁴ RCW 26.50.020 <http://apps.leg.wa.gov/rcw/default.aspx?cite=26.50.020>

- b. The petition for relief presents issues of residential schedule of and contact with the children of the parties; or
- c. The petition for relief under chapter 7.90 RCW requests the court to exclude a party from a dwelling which the parties share.³⁵

B. Venue

Venue lies in the county or municipality within which the petitioner resides.³⁶

C. Personal and Subject Matter Jurisdiction

Washington State generally has personal jurisdiction over its residents. Personal jurisdiction over a non-resident respondent is based upon the fact that a sexual assault, which constitutes a tortious injury, was committed in the state of Washington.³⁷ Subject matter jurisdiction lies within any state in which any part of the sexual assault was committed, regardless of whether either of the parties actually resides in the state where the act was committed. Washington can obtain jurisdiction over a non-resident by using the state's long arm statute.³⁸ A person who resides within the state, even if on a federal enclave, is still subject to the jurisdiction of a Washington court.³⁹

VII. Fees

No fees for filing or providing necessary certified copies may be charged to a petitioner seeking relief under chapter 7.90 RCW.⁴⁰

VIII. Notice and Service of Process

A. No Notice of Ex Parte Hearing Required

A hearing on a petition for an ex parte order does not require service of notice of the

³⁵ RCW 7.90.040(5), 26.50.020(5)

³⁶ RCW 7.90.040(6)

³⁷ RCW 4.28.185(1)(b) <http://app.leg.wa.gov/RCW/default.aspx?cite=4.28.185>

³⁸ RCW 4.28.185

³⁹ See, e.g., *Tammy S. v. Albert S.* 408 N.Y.S.2d 716 (1978) (court has jurisdiction over the residents although they lived in a federally owned installation); *Cobb v. Cobb*, 545 N.E.2d 1161 (Mass. 1989) (wife's status as a member of Armed Forces residing and working at a military installation in an area ceded to the federal government did not preclude the issuance of an abuse protection order. Further, protection order was effective in a ceded area, absent any indication that order interfered with federal function)

⁴⁰ RCW 7.90.055 <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.055>

hearing on the respondent.⁴¹ If the respondent appears at the hearing he or she may enter a general appearance and testify. In any event, however, at the conclusion of the hearing the court may enter an ex parte order.⁴²

B. Notice of Hearing on Final Order

1. Personal Service

A hearing on a petition for a final order requires personal service upon the respondent not less than five court days prior to the hearing.⁴³

If timely personal service cannot be made, the court shall either require additional attempts to obtain personal service, or permit service by publication or service by mail.⁴⁴ If the court authorizes service by publication or mail, the court shall set a hearing date not less than 24 days from the date of the order.⁴⁵ The court shall not require more than two attempts at obtaining personal service unless the petitioner so requests.⁴⁶

2. Service by Publication

The court may allow service by publication under the following circumstances:

- a. The sheriff or municipal peace officer files an affidavit stating that the officer was unable to complete personal service, describing the number and type of attempts the officer made to complete service;
- b. The petitioner files an affidavit stating that he/she believes the respondent is evading service, including the reasons for that belief;
- c. The server has mailed a copy of the summons, notice of hearing, and ex parte order of protection to the respondent's last known address, unless the server states that he/she does not know the respondent's address; and
- d. The court finds reasonable grounds exist to believe the respondent is concealing him/herself to avoid service, and that further attempts to personally serve the respondent would be futile or unduly burdensome.⁴⁷

Publication must be made in a newspaper of general circulation in the county in which the petition was brought and in the county of the last known address of the respondent once a week for three consecutive weeks. The selected newspaper must be one of the three

⁴¹ RCW 7.90.110(1)(b) <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.110>

⁴² RCW 7.90.110(2)

⁴³ RCW 7.90.050 <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.050>

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ RCW 7.90.052 <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.052>

most widely circulated papers in the county. Service of the summons is considered complete when the publication has been made for three consecutive weeks.⁴⁸

The summons must be signed by the petitioner, it must contain the date of the first publication, and it must require the respondent to appear and answer the petition on the date set for the hearing. The summons must also contain a brief statement of the reason for the petition and a summary of the provisions under the ex parte order.⁴⁹

3. Service by Mail

The court may order service by mail if the circumstances justifying service by publication (as described above) apply, if the court determines that service by mail is just as likely to give actual notice as service by publication, and if the serving party is unable to afford the cost of service by publication.⁵⁰

The service must be made by a competent person over age 18, who is not a party to the case. Copies of the order and other process must be mailed, postage prepaid, one by ordinary first-class mail and the other by a form of mail requiring a signed receipt showing when and to whom it was delivered. The envelopes must bear the return address of the sender.⁵¹ Service is deemed complete upon the mailing of the two copies.

C. No Service Fees for Personal Service by Public Agency

No service of process fees may be charged by a public agency to petitioners seeking relief under chapter 7.90 RCW and petitioners shall be provided with the necessary number of certified copies at no cost.⁵²

The sheriff of the county or the peace officers of the municipality in which the respondent resides shall serve the respondent personally unless the petitioner elects to have the respondent served by a private party.⁵³

IX. Relief Available

A. Restraint from Contact

The respondent may be restrained from having any contact, including nonphysical contact, with the petitioner directly, indirectly, or through third parties regardless of whether those third parties know of the order.⁵⁴

⁴⁸ RCW 7.90.052(3)

⁴⁹ Id.

⁵⁰ RCW 7.90.053 <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.053>

⁵¹ Please refer to Chapter 4, Section III(B)(1) for a discussion of the Address Confidentiality Program

⁵² RCW 7.90.055 <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.055>

⁵³ RCW 7.90.140 <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.140>

⁵⁴ RCW 7.90.090(2)(a) <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.090>

B. Exclusion from Premises

The respondent may be excluded from the petitioner's residence, workplace, school, or from the day care or school of a child, if the petitioner is a child.⁵⁵

C. Distance Prohibition

The respondent may be prohibited from knowingly coming within, or knowingly remaining within, a specified distance from a specified location.⁵⁶

D. Transfer of Schools

The court, when issuing a protective order in cases in which the petitioner and respondent are both under 18 years of age and attend the same public or private elementary, middle, or high school, **must** consider among the other facts of the case "the severity of the act, any continuing physical danger or emotional distress to the petitioner, and the expense difficulty and educational disruption that would be caused by a transfer of the respondent to another school."⁵⁷

The court, when issuing a protective order in such cases, **may** order that the respondent transfer to another school. If the court orders a transfer the parents or legal guardians of the person restrained are responsible for transportation and other costs associated with the school transfer. The court must send notice to the school that the petitioner attends and the school that the respondent will attend. that the respondent may not attend the same school as the petitioner.⁵⁸

E. Other Injunctive Relief

The court may "order any other injunctive relief as necessary or appropriate for the protection of the of the petitioner." ⁵⁹

F. Monetary damages are not recoverable.⁶⁰

G. Surrender of weapons or licenses

RCW 9.41.800 ⁶¹provides:

⁵⁵ RCW 7.90.090(2)(b)

⁵⁶ RCW 7.90.090(2)(c)

⁵⁷ RCW 7.90.090(3) <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.090>

⁵⁸ Id.

⁵⁹ RCW 7.90.090(2)(d)

⁶⁰ RCW 7.90.090(5)

⁶¹ RCW 9.41.800 <http://app.leg.wa.gov/rcw/default.aspx?cite=9.41.800>

(1) Any court when entering an order authorized under... RCW 7.90.090... shall, upon a showing by clear and convincing evidence, that a party has: Used, displayed, or threatened to use a firearm or other dangerous weapon in a felony, or previously committed any offense that makes him or her ineligible to possess a firearm under the provisions of RCW 9.41.040:

(a) Require the party to surrender any firearm or other dangerous weapon;

(b) Require the party to surrender any concealed pistol license issued under RCW 9.41.070;

(c) Prohibit the party from obtaining or possessing a firearm or other dangerous weapon;

(d) Prohibit the party from obtaining or possessing a concealed pistol license.

(2) Any court when entering an order authorized under... RCW 7.90.090... may, upon a showing by a preponderance of the evidence but not by clear and convincing evidence, that a party has: Used, displayed, or threatened to use a firearm or other dangerous weapon in a felony, or previously committed any offense that makes him or her ineligible to possess a firearm under the provisions of RCW 9.41.040:

(a) Require the party to surrender any firearm or other dangerous weapon;

(b) Require the party to surrender any concealed pistol license issued under RCW 9.41.070;

(c) Prohibit the party from obtaining or possessing a firearm or other dangerous weapon;

(d) Prohibit the party from obtaining or possessing a concealed pistol license.

(3) During any period of time that the person is subject to a court order issued under chapter 7.90 RCW... that:

(a) Was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate;

(b) Restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(c)(i) Includes a finding that the person represents a credible threat to the physical safety of the intimate partner or child; and

(ii) By its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury, the court shall:

(A) Require the party to surrender any firearm or other dangerous weapon;

(B) Require the party to surrender a concealed pistol license issued under RCW [9.41.070](#);

(C) Prohibit the party from obtaining or possessing a firearm or other dangerous weapon; and

(D) Prohibit the party from obtaining or possessing a concealed pistol license.

(4) The court may order temporary surrender of a firearm or other dangerous weapon without notice to the other party if it finds, on the basis of the moving affidavit or other evidence, that irreparable injury could result if an order is not issued until the time for response has elapsed.

(5) In addition to the provisions of subsections (1), (2), and (4) of this section, the court may enter an order requiring a party to comply with the provisions in subsection (1) of this section if it finds that the possession of a firearm or other dangerous weapon by any party presents a serious and imminent threat to public health or safety, or to the health or safety of any individual.

(6) The requirements of subsections (1), (2), and (5) of this section may be for a period of time less than the duration of the order.

(7) The court may require the party to surrender any firearm or other dangerous weapon in his or her immediate possession or control or subject to his or her immediate possession or control to the sheriff of the county having jurisdiction of the proceeding, the chief of police of the municipality having jurisdiction, or to the restrained or enjoined party's counsel or to any person designated by the court.

X. Duration of Orders

A. Ex Parte Orders

Ex parte orders shall be effective for a fixed period not to exceed 14 days if there is personal service, or not later than 24 days if service by publication or mail is permitted.⁶²

***Note:** The reason ex parte orders cannot exceed 14 or 24 days is to prevent a due process violation against a respondent who does not have notice of the proceedings against him or her. However, if both parties appear and either agree to a continuance or the respondent requests a longer continuance, arguably the respondent's due process rights are no longer in jeopardy, the temporary order before the court is no longer an ex parte order, and it is within the discretionary authority of the court to extend the temporary SAPO beyond fourteen or twenty-four days to a continued hearing date.*

B. Final Orders

Upon a full hearing, a final order may be granted for a fixed period or be permanent.⁶³
***Note:** This provision of the statute was amended by the legislature in 2017; previously, SAPOs could only be granted for a maximum of two years.*

XI. Findings Required If Ex Parte Order Not Granted

If the court denies issuance of an ex parte order, the court shall state the particular reasons for its denial.⁶⁴

XII. Evidence

A. Rules of Evidence Need Not Be Applied in Protection Order Hearings

The rules of evidence, except for the rules and statutes concerning privileges, need not be applied during sexual assault protection order hearings. Thus, for example, hearsay is admissible at such hearings.⁶⁵

⁶² RCW 7.90.120(1)(a) <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.120>

⁶³ RCW 7.90.120(2) <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.120>

⁶⁴ RCW 7.90.110(3) <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.110>

⁶⁵ ER 1101(c)(4)

http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=ER&ruleid=gaer1101

The rationale for not applying the rules of evidence in such hearings is to make the process more accessible to pro se litigants, who represent the majority of the parties in protection order proceedings.

Procedural fairness exercised by judges is well understood to increase the satisfaction of court participants with the proceedings itself, and also in the perceived justice in the result.⁶⁶ In order to make the proceedings accessible to all parties, especially those not represented by counsel, it is helpful for the court to announce and explain its policy on applying the rules of evidence at the beginning of the calendar. If the court will not consider hearsay, for example, such an announcement affords the parties the opportunity to request a continuance to enable them to bring witnesses or documentation to be considered at the full hearing.

B. Prior Sexual Activity or Reputation of the Petitioner is Generally Inadmissible

Evidence of a petitioner's prior sexual activity or reputation may only be admitted as it relates to past sexual conduct between the petitioner and respondent on the issue of consent to the alleged sexual assault, or when constitutionally required.⁶⁷

A party intending to offer such evidence must 1) file a written motion at least 14 days before the hearing specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause, requires a different time for filing or permits filing during the hearing, and 2) serve the motion on all parties and notify the petitioner or, when appropriate, the petitioner's guardian or representative.⁶⁸

The court may not admit such evidence until it has held an *in camera* hearing to determine 1) that the information is reasonably specific as to date, time, or place and 2) that the probative value of the evidence outweighs the danger of unfair prejudice.⁶⁹

The petitioner and other parties have the right to attend the hearing and be heard, and the motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise.⁷⁰

C. Burden of Proof

⁶⁶ Burke and Leben, "Procedural Fairness: A Key Ingredient in Public Satisfaction," ABA 44 Court Review 4 (2007).

http://www.proceduralfairness.org/~media/Microsites/Files/procedural-fairness/Burke_Leben.ashx

⁶⁷ RCW 7.90.080(1)(a)-(b) <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.080>; ER 412 http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=ER&ruleid=gaer0412

⁶⁸ ER 412(d)(1) http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=ER&ruleid=gaer0412

⁶⁹ RCW 7.90.080(2), ER 412(c) <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.080>; http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=ER&ruleid=gaer0412

⁷⁰ ER 412(d)(2)

1. Ex parte orders

The court shall issue an ex parte order if the petitioner shows by a preponderance of the evidence that

- (a) The petitioner has been a victim of nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent; and
- (b) There is good cause to grant the remedy, regardless of the lack of prior service of process or of notice upon the respondent, because the harm which that remedy is intended to prevent would be likely to occur if the respondent were given any prior notice, or greater notice than was actually given, of the petitioner's efforts to obtain judicial relief.⁷¹

2. Final orders

The court shall issue a final order if the court finds by a preponderance of the evidence that the petitioner has been a victim of nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent.⁷² At this point, it is unclear whether the petitioner must prove, with specific statements or actions, a reasonable fear of future dangerous acts by the respondent in order to obtain a final SAPO. Division I rejected this argument⁷³ and the Supreme Court declined to answer this question in the majority opinion.⁷⁴ It is clear that, in the petition, the petitioner must allege a specific statements or actions that give rise to a reasonable fear of future dangerous acts by the respondent.⁷⁵

D. Limitations Upon Consideration of Evidence

The petitioner must not be denied a sexual assault protection order because either party is a minor or because the petitioner did not report the assault to law enforcement.⁷⁶

The court may not require proof of physical injury of the petitioner or proof that the petitioner has reported the sexual assault to law enforcement.⁷⁷

Denial of a remedy may not be based, in whole or in part, on evidence that the respondent was voluntarily intoxicated, the petitioner was voluntarily intoxicated, or the

⁷¹ RCW 7.90.110(1) <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.110>

⁷² RCW 7.90.090(1)(a) <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.090>

⁷³ *Roake v. Delman*, 194 Wn. App. 442, 377 P.3d 258 (2016)

⁷⁴ *Roake v. Delman*, 408 P.3d 658 (2018)

⁷⁵ Id. See also court form SA 1.015

<http://www.courts.wa.gov/forms/index.cfm?fa=forms.contribute&formID=65>

⁷⁶ RCW 7.90.090(1)(b) <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.090>

⁷⁷ Id.

petitioner engaged in limited consensual sexual touching.⁷⁸ Where there is evidence of intoxication, the court has an obligation to determine the petitioner's capacity to consent.⁷⁹

XIII. Discovery

When one or both parties to a SAPO case are represented by an attorney, discovery requests, including interrogatories and requests for production, may be made. The civil rules make special provision for discovery in protection order cases, expressly giving the court the authority to limit discovery when “justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense....”⁸⁰ CR 26(c) also states that the court may place the following limitations on discovery:

- that discovery may not be allowed;
- that discovery may be limited to specific terms and conditions;
- that only certain methods of discovery may be allowed;
- that certain matters may not be inquired into;
- that discovery be conducted with no one present except persons designated by the court;
- that the contents of a discovery deposition not be disclosed or be disclosed only in a designated way;
- that a trade secret or other confidential research, development, or commercial information may not be disclosed or be disclosed only in a designated way;
- that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.⁸¹

Good cause for limiting discovery in SAPO cases is established by showing the threat of annoyance, embarrassment, oppression, or undue burden or expense, and that these harms can be avoided without impeding the discovery process.⁸² There are no specific provisions within chapter 7.90 RCW that provide for discovery or trial in a SAPO case.

XIV. Conducting the Hearing

⁷⁸ RCW 7.90.090(4)(a)-(c)

⁷⁹ *Nelson v. Duvall*, 197 Wn. App. 441, 387 P.3d 1158 (2017)

⁸⁰ CR 26(c)

http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=CR&ruleid=supcr26

⁸¹ *Id.*

⁸² See the non-precedential decision in *Kantola v. Juvinall*, 150 Wn. App. 1007 (2009 unpublished) citing *Rhinehard v. Seattle Times Co.*, 98 Wn.2d 226, 256, 654 P.2d 673 (1982)

A. Protecting the Safety and Privacy of the Parties

As in all cases involving alleged interpersonal violence, there are additional safety concerns when both parties must appear in the same courtroom.

Practice Tip: *The court should consider these safety concerns when determining how to elicit testimony from the parties. It may be inappropriate, for example, to allow pro se parties to conduct questioning through direct or cross examination.*

The court should arrange for the positioning of the parties and the deployment of court and security personnel within all courtroom areas to prevent contact between the parties. The court should also stagger release times of the parties from the courtroom.

Practice Tip: *If court facilities do not have a separate waiting area for petitioners and respondents, contact between the parties can be minimized if there are separate and clearly-marked seating areas for petitioners and respondents on the gallery benches.*

B. Scheduling Hearings

Due to the especially sensitive nature of SAPO proceedings, two important scheduling issues arise.

1. Uncontested hearings for default or continuance

Attention should be given to minimizing the time SAPO parties are required to wait if the hearing will involve only the entry of a default or an uncontested order of continuance by identifying those cases and calling them at the beginning of the calendar. Parties to SAPO proceedings are very often nervous and apprehensive, and requiring parties to sit through a full calendar until their case is called for a brief, non-contested hearing unnecessarily exacerbates their stress and can discourage petitioners from following through with the protection order process.

Courts should be cautious about entering default orders against a petitioner at the beginning of the calendar for the petitioner's failure to appear. Frequently, petitioners will be apprehensive about proceeding with a SAPO, may be fearful of encountering the respondent at court, and may find the process confusing and intimidating, which can contribute to a petitioner appearing late. In the cases in which the petitioner arrives after the court has entered a default and dismissal, and the respondent has not appeared at the hearing, the court may find it appropriate to simply vacate the default and dismissal. However, in those cases in which the respondent was present when the court entered a default and dismissal, then left before the petitioner later arrived, the court is faced with the choice of vacating the default and dismissal without notice to the respondent who appeared and was present when the default and dismissal were ordered or requiring the petitioner to file a new petition. To avoid such a problematic choice, the court should consider identifying those cases in which the respondent is present but the petitioner is not and, in those cases, directing the respondent to

remain present for a period of time it deems appropriate, to determine if the petitioner will appear.

2. Contested hearings

If SAPO hearings are set on a calendar that includes other types of cases, full SAPO hearings at which both parties will be present should be scheduled at the end of the calendar, when persons involved in other types of cases have left the courtroom, to protect the privacy of the parties involved.

Practice Tip: *A recommended best practice for scheduling SAPO hearings is the following sequential order:*

1st Cases in which there is no proof of service

2nd Cases in which only one party is present and the case will be dismissed or a default order entered

3rd If both SAPO cases and non-SAPO cases are scheduled on the same calendar, the non-SAPO cases in which both parties are present and ready to proceed with a full hearing

4th SAPO cases in which both parties are present and ready to proceed with a full hearing

C. Telephonic Hearing

The court may schedule a hearing by telephone pursuant to local court rule to reasonably accommodate a disability, or in exceptional circumstances to protect a petitioner from further nonconsensual sexual conduct or nonconsensual sexual penetration. The court shall require assurances of the petitioner's identity before conducting a telephonic hearing.⁸³

D. Existence of Criminal Investigation or Charge

Whether there is an ongoing criminal investigation or charge should be a standard inquiry in SAPO cases to identify potential Fifth Amendment issues.

Practice Tip: *If there is a pending investigation or if criminal charges have been filed, a best practice is to advise respondents of their Fifth Amendment rights and, if requested, grant a continuance to allow the respondent time to consult with an attorney regarding those rights.*

Continuances of SAPO hearings pending the outcome of criminal investigations or charges should be avoided, if possible, because investigations often take many months. This

⁸³ RCW 7.90.050 <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.050>

places an undue burden on the petitioner to continue coming back to court to get the temporary protection order reissued or to re-file the petition without resolution in his or her case. Moreover, the outcome of the criminal investigation and the prosecutor's filing decision should not impact the outcome of a civil SAPO case. The state must make a charging decision based on whether it believes it could prove "beyond a reasonable doubt" that a sexual offense was committed, whereas the burden of proof in a civil SAPO case is a "preponderance of the evidence" standard.

However, if Fifth Amendment rights are asserted, the court should carefully consider the application of the analysis prescribed in *King v. Olympic Pipeline*.⁸⁴ The competing interests that must be balanced include:

1. implication of the Fifth Amendment privilege⁸⁵
2. similarities between civil and criminal cases⁸⁶
3. status of the criminal case⁸⁷
4. plaintiffs' interests and potential prejudice⁸⁸
5. the burdens on the party asserting the privilege⁸⁹
6. convenience and efficiency of the court⁹⁰
7. interests of non-parties to civil litigation⁹¹
8. public interest in civil and criminal litigation⁹²

E. Sexual Assault Advocates

A "sexual assault advocate" is an employee or volunteer from a rape crisis center, victim assistance unit, program, or association that provides information, medical or legal advocacy, counseling, or support to victims of sexual assault, who is designated by the alleged victim to accompany them to the hospital or other health care facility and to proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings.⁹³

⁸⁴ 104 Wn. App. 338, 16 P.3d 45(2000)

⁸⁵ Id. at 353-57

⁸⁶ Id. at 357-58

⁸⁷ Id. at 358-59

⁸⁸ Id. at 359-62

⁸⁹ Id. at 362-65

⁹⁰ Id. at 365

⁹¹ Id. at 366

⁹² Id. at 366-68

⁹³ RCW 5.60.060(7)(a) <http://apps.leg.wa.gov/rcw/default.aspx?cite=5.60.060>

The petitioner must be allowed to receive assistance from a sexual assault advocate in preparing the petition, and is also allowed to confer with an advocate and have one accompany him/her to court. Sexual assault advocates are not engaged in the unauthorized practice of law when providing the foregoing assistance.⁹⁴

Communications between the petitioner and a sexual assault advocate are privileged.⁹⁵

F. Appointment of Counsel

RCW 7.90.070 states: “The court may appoint counsel to represent the petitioner if the respondent is represented by counsel.”⁹⁶

This statutory provision is intended to maintain fairness in the proceedings, which is often jeopardized when a respondent appears with counsel. The danger is illustrated in a study conducted in King County in 2010 which found that all SAPO cases in which the respondent had an attorney and petitioner did not were dismissed.⁹⁷

This statistic illustrating the benefit of access to counsel may be remedied in some cases by use of RCW 7.90.070. The court may wish to consult with its justice partners in this area to establish a method by which counsel might be appointed (and either paid by the court, through an available non-profit, or work on contingent fees subject to attorney fee reimbursement also contemplated by the SAPO statute. RCW 7.90).

G. Non-English-Speaking Parties

Non-English-speaking parties may be unable to articulate relevant facts or the relief that they are requesting due to language or cultural barriers, putting them at a disadvantage during legal proceedings.

The court shall appoint a qualified interpreter to assist a non-English speaking person or a person who cannot readily understand or communicate in spoken language due to a hearing or speech impairment.⁹⁸

Currently, the Administrative Office of the Courts has translated information about sexual assault protection orders into Russian, Spanish, Korean and Vietnamese. This informational brochure is available in those languages in PDF format. To access the

⁹⁴ RCW 7.90.060

⁹⁵ RCW 5.60.060(7)

⁹⁶ <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.070>

⁹⁷ CourtWatch, A Program of KCSARC, “Analyzing the Impact and Application of the Sexual Assault Protection Order in King County” 17, <http://www.kcsarc.org/sites/default/files/CourtWatch-Report%20April%202011.pdf>

RCW 2.42.120 <http://apps.leg.wa.gov/rcw/default.aspx?cite=2.42.120>, 2.43.030
<http://apps.leg.wa.gov/RCW/default.aspx?cite=2.43.030>

brochure in those languages and a list of translations underway into other languages go to <http://www.courts.wa.gov/forms/>.

XV. Multiple Protection Orders

A petitioner protected by an order entered in a criminal proceeding under RCW 7.90.150 or by a criminal no-contact order may also seek a civil SAPO because protection orders entered in a criminal proceeding will be dismissed if the criminal proceeding is dismissed.

***Practice Tip:** If the defendant is acquitted of criminal charges, a SAPO issued in conjunction with the criminal case will be terminated unless the alleged victim files an independent action for a civil SAPO, in which case the court may keep the SAPO in the criminal case in place until a full hearing is conducted in the civil SAPO case.⁹⁹*

XVI. Mutual Protection Orders Strongly Disfavored

The court should not enter a SAPO on behalf of a party who has not properly filed and served a petition prior to the hearing. Mutual protection orders can lead to (a) due process violations when issued against a petitioner without prior notice; (b) lack of clarity for law enforcement in determining whose conduct is prohibited by court order; (c) opportunity for a manipulative respondent to entrap the petitioner in a situation that could lead to the petitioner's arrest; and (d) the impression that the court believes the alleged victim is responsible for the sexual assault.

XVII. Modification or Termination of Final Orders

Either party may petition the court to modify or terminate the terms of an existing sexual assault protection order before its expiration date. The court may modify or terminate the order upon notice and hearing.¹⁰⁰

A respondent's motion to terminate or modify a sexual assault protection order must include a declaration setting forth the facts that support their request, and nonmoving parties may have the opportunity to file opposing declarations.¹⁰¹ The court shall deny the motion unless it finds adequate cause, in which case it shall order a hearing on the respondent's motion, no later than 14 days from the date of the order.¹⁰²

In order for the SAPO to be modified or terminated, the respondent must prove by a preponderance of the evidence that there has been "a material change in circumstances such that the respondent is not likely to engage in or attempt to engage in physical or nonphysical contact with the persons protected by the protection order if the order is terminated or

⁹⁹ RCW 7.90.150(2)(b) <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.150>

¹⁰⁰ RCW 7.90.170 <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.170>

¹⁰¹ RCW 7.90.170(2)(a) <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.170>

¹⁰² RCW 7.90.170(3)

modified.”¹⁰³ The petitioner does not bear a burden to prove a current reasonable fear of harm by the respondent to prevent termination or modification.¹⁰⁴

A respondent is limited to filing no more than one motion to terminate or modify a SAPO in every twelve-month period that the order is in effect.¹⁰⁵

The court may require the respondent to pay the petitioner for costs incurred to respond to a motion to modify or terminate, including reasonable attorneys’ fees.¹⁰⁶

XVIII. Renewal of Final Orders

There is no limit to the number of times a final order for a fixed period may be renewed. A petitioner may apply for renewal of the sexual assault protection order by filing a petition for renewal at any time within three months prior to the order’s expiration date.¹⁰⁷

The court shall grant the motion for renewal unless the respondent proves by a preponderance of the evidence that there has been “a material change in circumstances such that the respondent is not likely to engage in or attempt to engage in physical or nonphysical contact with the petitioner when the order expires.”¹⁰⁸

In determining whether there has been a material change in circumstances, the passage of time and compliance with an existing protection order shall not, alone, be sufficient to meet the respondent’s burden of proof.¹⁰⁹ The court may consider the following unweighted factors:¹¹⁰

- (i) Whether the respondent has committed or threatened sexual assault, domestic violence, stalking, or other violent acts since the protection order was entered;
- (ii) Whether the respondent has violated the terms of the protection order and the time that has passed since the entry of the order;
- (iii) Whether the respondent has exhibited suicidal ideation or attempts since the protection order was entered;
- (iv) Whether the respondent has been convicted of criminal activity since the protection order was entered;

¹⁰³ RCW 7.90.170(2)(b)

¹⁰⁴ Id.

¹⁰⁵ RCW 7.90.170(2)(c)

¹⁰⁶ RCW 7.90.170(d)

¹⁰⁷ RCW 7.90.121(2) <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.121>

¹⁰⁸ RCW 7.90.121(3)(a) <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.121>

¹⁰⁹ RCW 7.90.121(3)(b)

¹¹⁰ RCW 7.90.121(3)(c)

(v) Whether the respondent has either acknowledged responsibility for acts of sexual assault that resulted in entry of the protection order or successfully completed sexual assault perpetrator treatment or counseling since the protection order was entered;

(vi) Whether the respondent has a continuing involvement with drug or alcohol abuse, if such abuse was a factor in the protection order;

(vii) Whether the respondent or petitioner has relocated to an area more distant from the other party, giving due consideration to the fact that acts of sexual assault may be committed from any distance such as via cybercrime;

(viii) Other factors relating to a material change in circumstances.

XIX. Law Enforcement Information System

A copy of a SAPO granted under chapter 7.90 RCW must be forwarded by the clerk of the court to the appropriate law enforcement agency specified in the order on or before the next day. Upon receipt, the law enforcement agency shall immediately enter the order into any computer-based criminal intelligence system available in this state used by law enforcement agencies to list outstanding warrants.¹¹¹

Entry into the law enforcement information system serves as notice to all law enforcement agencies that the order exists. The SAPO is fully enforceable in any county in Washington.¹¹²

XX. Enforcement of Protection Orders

A knowing violation of a SAPO is punishable under RCW 26.50.110.¹¹³ A detailed discussion of civil and criminal enforcement of SAPOs is contained in Chapter 8, pp. 28-34, of Washington's *Domestic Violence Manual for Judges* available at: <http://www.courts.wa.gov/index.cfm?fa=home.contentDisplay&location=manuals/domViol/index>

XXI. Full Faith and Credit

A protection order from another state may be enforced in Washington so long as (a) it was issued to prevent violent or threatening acts, harassing behavior, sexual violence, or to prohibit contact; (b) the court that issued the order had jurisdiction over the parties; and (c) the respondent received notice and opportunity to be heard.¹¹⁴

¹¹¹ RCW 7.90.160(1) <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.160>

¹¹² Id.

¹¹³ RCW 7.90.090(6) <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90.090>

¹¹⁴ 18 U.S.C. §§ 2265(a) & (b), 2266(5)

XXII. Sealing Court Records

The petitioner or respondent may bring a motion to seal certain documents in the court file so that they are not a part of the public record. For example, medical or counseling records, photos, or declarations referencing such content may be information that the parties do not want the public to access. The respondent may even bring a motion to seal or redact the original petition if the SAPO is dismissed.

In considering a motion to seal, the court must apply GR 15 and the *Ishikawa*¹¹⁵ factors before issuing a ruling.¹¹⁶ There is a presumption of openness for court records in Washington;¹¹⁷ however, GR 15(c)(2) provides that the court may find that this presumption is outweighed by compelling privacy or safety concerns of the parties, including findings that”

(A)The sealing... is permitted by statute; or (B) The sealing... furthers an order entered under CR 12(f) or a protective order entered under CR 26(c); or.... (F) Another identified compelling circumstance exists that requires the sealing....”¹¹⁸

If some or all of the factors enumerated under GR 15(c)(2) are found to exist, the court must follow these steps outlined in *State v. Ishikawa*:¹¹⁹

- a. The proponent of sealing must make some showing of the need therefor, showing a “serious and imminent threat to some other important interest.”¹²⁰
- b. Anyone present at the motion hearing must be given the opportunity to object.
- c. The court and the parties should carefully analyze whether the motion to seal is the least restrictive means to protect the threatened interest.
- d. “The court must weigh the competing interests of the defendant and the public.”¹²¹
- e. “The order must be no broader in its application or duration than necessary to serve its purpose.”¹²²

¹¹⁵ *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982)

¹¹⁶ *State v. Waldon*, 148 Wn. App. 952, 202 P.3d 325 (2009)

¹¹⁷ *See Rufer v. Abbott Labs.*, 154 Wn.2d 530, 540, 114 P.3d 1182 (2005)

¹¹⁸ GR 15(c)(2)

http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr15

¹¹⁹ *State v. Ishikawa*, supra at 37-39; see also *State v. Bone-Club*, 128 Wn.2d 254, 906 P.2d 325 (1995)

¹²⁰ *Id.* at 37

¹²¹ *Id.* at 38

¹²² *Id.* at 39