

CHAPTER 9

Civil Protection Orders

“Sexual assault is the most heinous crime against another person short of murder. Sexual assault inflicts humiliation, degradation, and terror on victims.... Victims who do not report the crime still may need to seek safety and protection from future interactions with the perpetrator and have a right to such safety and protection. Some cases where rape is reported are not prosecuted or do not lead to a conviction. A victim should be able to expediently seek a civil remedy requiring that the perpetrator stay away from the victim, independent of the criminal process and regardless of whether related criminal charges are pending...”

From 2021 Washington State Legislature at RCW 7.105.900(2)(b)

I. Introduction

The effects of sexual assault are devastating, as acknowledged above by the Washington State Legislature in the findings section of the Civil Protection Order statute, [Chapter 7.105 RCW](#). If the perpetrator continues to have contact with the victim after the assault, the devastation is compounded by continued trauma and harm.

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

II. Legislative History

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.¹

¹ 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).

Passage of the Sexual Assault Protection Order Act, RCW 7.90, filled the gap that had existed for many sexual assault victims by providing them with an avenue to obtain “stay away” protection from their perpetrator.

In 2021, the Washington State Legislature passed a landmark bill² intended to modernize and harmonize all of Washington’s laws concerning civil protection orders and to improve access to justice. In passing this legislation, each of the six RCW chapters concerning Washington’s different civil protection orders were repealed and [Chapter 7.105 RCW](#), Civil Protection Orders, was enacted. The Legislature made additional amendments in what was referred to as the “trailer bill” in 2022.³ Sexual assault protection orders now fall within the new statute, [Chapter 7.105 RCW](#).

III. Overview of Chapter 7.105 RCW, Civil Protection Orders

A. Protection Orders Available in Washington under RCW 7.105:

1. Sexual assault protection orders (SAPO);
2. Domestic violence protection orders (DVPO);
3. Antiharassment protection orders (AHO);
4. Vulnerable adult protection orders (VAPO);
5. Stalking protection orders (SKPO); and
6. Extreme risk protection orders (ERPO).

There are also criminal no-contact orders and domestic relations restraining orders,⁴ which are not addressed in this chapter.

B. Scope of this Chapter and Cross-References

This chapter is primarily concerned with civil protection orders that may be sought by victims of sexual assault. 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 to all civil orders obtained pursuant to Chapter 7.105 RCW.

² Engrossed Second Substitute House Bill (E2SHB) 1320, available at <https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/1320-S2.SL.pdf?q=20220630095837>.

³ Substitute House Bill (SHB) 1901, available at <https://lawfilesexternal.wa.gov/biennium/2021%20%2022/Pdf/Bills/Session%20Laws/House/1901-S.SL.pdf?q=20220630102306>.

⁴ RCW 26.09.060, 26.09.300, 26.10.040, 26.44.063, 26.26.130.

Civil protection orders that may be sought by victims of domestic violence, harassment, stalking, or orders that seek to protect vulnerable adults are discussed in Washington’s *Domestic Violence Manual for Judges*, available at: <http://www.courts.wa.gov/index.cfm?fa=home.contentDisplay&location=manuals/domViol/index>.

This chapter includes the following appendices:

Appendix A: Chart summarizing the significant attributes of the types of civil orders available to sexual assault victims.

Appendix B: Bench card for judges re: conducting SAPO hearings.

Appendix C: Bench card for judges related to advancing procedural justice at protection order hearings, developed by King County Sexual Assault Resource Center.

Appendix D: Bench card for judges related to continuance requests when there are concurrent criminal proceedings stemming from the same alleged conduct, developed by the Washington State Gender & Justice Commission’s E2SHB 1320 Stakeholder Group.

Appendix E: Civil protection order script, developed by the Washington State Gender & Justice Commission’s E2SHB 1320 Stakeholder Group.

Appendix F: Pro se litigant bench card developed by Kitsap County District Court Judge Jeffrey Jahns.

Appendix G: Legal resources for civil protection orders in Washington State.

Appendix H: Document intended for litigants that includes information about how to present evidence in a civil protection order case.

Appendix I: Address Confidentiality Program.

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

The term “sexual assault protection order” refers to both *ex parte*⁵ temporary orders and full orders, which may include relief authorized by [RCW 7.105.310](#). This chapter will distinguish between the two types of orders as follows:

⁵ *Ex parte* is a legal Latin term that refers to a proceeding in which only one party appears before the court.

1. Ex parte temporary orders

RCW 7.105.305⁶ provides for the issuance of “ex parte temporary protection orders” other than for extreme risk protection orders. 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. Full orders

Duration and relief for full orders, other than for extreme risk protection orders, are addressed in [RCW 7.105.310](#) and [RCW 7.105.315](#), which are issued upon notice to the respondent and after a hearing. References to these orders as “permanent orders” are misleading because they may be either granted for “a fixed period of time or be permanent⁷ with an expiration date of 99 years from the date of issuance. Instead, orders issued following notice and a hearing will be referred to throughout this chapter as “full orders.”

IV. Standard Forms

A. Statutory Authority

[RCW 7.105.115](#) directs the Administrative Office of the Courts to develop and distribute standard forms for petitions and orders issued under Chapter 7.105 RCW, as well as instructions, informational brochures, and a court staff handbook. These resources 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. Law enforcement officers, judicial and criminal information gathering agencies, and other courts are familiar with and rely upon the standard forms. A current listing of Washington’s protection order forms can be found at: <http://www.courts.wa.gov/forms/?fa=forms.contribute&formid=65>.

If the court uses orders prepared by an attorney, it should consider requesting that attorneys use the mandatory forms thus ensuring that all proper boxes have been checked and written findings made.⁸ All protection orders, except extreme risk protection orders, should include in a conspicuous location, notice of the criminal penalties resulting from violation of the order, and the following statement:

⁶ <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.305>.

⁷ RCW 7.105.315.

⁸ Some court may have developed their own local forms based upon the State forms (naming local law enforcement or other resources for example).

“You can be arrested even if the protected person or persons invite or allow you to violate the order. You alone are responsible for following the order. Only the court may change the order. Requests for changes must be made in writing.”
RCW 7.105.115(1)(a)(i).

A protection order that does not contain this language may still be sufficient to sustain a criminal conviction. *City of Seattle v. May*, 171 Wn. 2d 847, 256 P.3d 1161 (2011).

V. Statute of Limitations

There is no time limit for when a party must file for a civil protection order. A petition may not be denied because “[t]he conduct at issue did not occur recently or because of the passage of time since the last incident of conduct giving rise to the petition.”⁹

The Washington State Legislature also recognizes that “[v]ictims who do not report the crime still desire safety and protection from future interactions with the offender.”¹⁰ Therefore, petitioners do not need to report a sexual assault to law enforcement to be eligible for a civil protection order.

VI. Petitions for a Sexual Assault Protection Order

A petitioner may seek relief by filing a petition that alleges the “existence of nonconsensual sexual conduct or nonconsensual sexual penetration that was committed against the petitioner by the respondent.”¹¹ A single incident is sufficient grounds to file a protection order petition.¹²

A. Relevant Definitions

1. **“Consent”** in the context of sexual acts means that at the time of sexual contact, there are actual words or conduct indicating freely given agreement to that sexual contact.
 - a. Consent must be ongoing and may be revoked at any time.
 - b. Conduct short of voluntary agreement does not constitute consent as a matter of law.
 - c. Consent cannot be freely given when a person does not have capacity due to disability, intoxication, or age.

⁹ RCW 7.105.225(2)(e) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.225>.

¹⁰ RCW 7.105.900(3)(b) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.900>.

¹¹ RCW 7.105.100(b) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.100>.

¹² *Id.*

- d. Consent cannot be freely given when the other party has authority or control over the care or custody of a person incarcerated or detained.¹³
2. **“Nonconsensual”** means “lack of freely given consent.”¹⁴ 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:¹⁵
 - a. The petitioner is under 12 years of age and the respondent is at least twenty-four months older (1st degree rape of a child);¹⁶
 - b. The petitioner is under 12 years of age and the respondent is at least thirty-six months older (1st degree child molestation);¹⁷
 - c. The petitioner is 12 or 13 years of age and the respondent is at least thirty-six months older (2nd degree rape of a child; 2nd degree child molestation);¹⁸
 - d. The petitioner is 14 or 15 years of age and the respondent is at least forty-eight months older (3rd degree rape of a child; 3rd degree child molestation);¹⁹
 - e. The petitioner is a resident at a correctional facility, or is under supervision, and the respondent is an employee or contractor of the correctional facility, including but not limited to jails, prisons, detention centers, or work release facilities, or is under correctional supervision, and has, or the victim reasonably believes the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision (1st and 2nd degree custodial sexual misconduct);²⁰ and
 - f. The petitioner is 16 or 17 years of age and the respondent is at least 60 months older than the petitioner and is in a supervisory position; the petitioner is a student between 16-20 years of age and the respondent is a school employee at least 60 months older than the student; or the petitioner is 16 or 17 years of

¹³ RCW 7.105.010(4) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.010>.

¹⁴ RCW 7.105.010(25).

¹⁵ 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;”). See also, *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)).

¹⁶ RCW 9A.44.073 <http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.073>.

¹⁷ RCW 9A.44.083 <http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.083>.

¹⁸ 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>.

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>.

²⁰RCW 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>.

age and a foster child of the respondent (1st and 2nd degree sexual misconduct with a minor).²¹

3. **“Sexual abuse”** is any form of nonconsensual sexual conduct including, but not limited to, unwanted or inappropriate touching, rape, molestation, indecent liberties, sexual coercion, sexually explicit photographing or recording, voyeurism, indecent exposure, and sexual harassment. "Sexual abuse" also includes any sexual conduct between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under [Chapter 71A.12 RCW](#), and a vulnerable adult living in that facility or receiving service from a program authorized under [Chapter 71A.12 RCW](#), whether or not the sexual conduct is consensual.²²
4. **“Sexual conduct”** means any of the following:
 - (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 16, 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 16, directly or indirectly, including through clothing, of the genitals, anus, or breasts of the respondent or others.²³
5. **“Sexual penetration”** is 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,

²¹ 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).

²² RCW 7.105010(2)(e) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.010>.

²³ RCW 7.105.010(31) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.010>.

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.²⁴

B. Parties to Sexual Assault Protection Order Cases

1. Petitioner

A victim of nonconsensual sexual conduct or nonconsensual sexual penetration, *including a single incident*, may petition the court for a sexual assault protection order.²⁵ A petitioner who has been sexually assaulted by an intimate partner or a family or household member *should, but is not required to*, seek a domestic violence protection order, rather than a sexual assault protection order.

The petitioner may petition for a civil protection order on their own behalf, or on behalf of: a minor child (where petitioner is the parent, legal guardian, or custodian); a vulnerable adult where the petitioner is an interested person; or any other adult for whom the petitioner demonstrates to the court's satisfaction that the petitioner is interested in the adult's well-being, the court's intervention is necessary, and the adult cannot file the petition because of age, disability, health, or inaccessibility.²⁶

In its discretion, the court may appoint a guardian ad litem for a petitioner under 18 years of age and not represented by counsel. This appointment is subject to the availability of amounts appropriated to local courts for this purpose, or as provided through alternative sources including, but not limited to: grants, local funding, or pro bono means, as neither party shall be required by the court to pay any costs associated with the appointment.²⁷

2. Respondent

If the court deems it necessary, the court may appoint a guardian ad litem for a respondent under 18 years of age and not represented by counsel. This appointment is subject to the availability of amounts appropriated for this purpose, or as provided through alternative sources including, but not limited to: grants, local funding, or pro bono means, as neither party shall be required by the court to pay any costs associated with the appointment.²⁸

See section XVI (p. 28) of this chapter for a discussion of the parties' Fifth Amendment right against self-incrimination in the context of a civil protection order hearing.

²⁴ RCW 7.105.010(32).

²⁵ RCW 7.105.100(1)(b) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.100>.

²⁶ Id.

²⁷ RCW 7.105.105(11) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.105>.

²⁸ Id.

VII. Jurisdiction and Venue

A. Court Jurisdiction

1. Ex parte orders

Washington district and superior courts have jurisdiction to issue ex parte orders for all types of protection orders.²⁹

2. Full orders

Washington district and superior courts have concurrent jurisdiction to issue full orders in most protection orders. However, transfer of civil protection order proceedings from district court to superior court is required when:

- a. A superior court has exercised or is exercising jurisdiction over a proceeding involving the parties;
- b. The action would have the effect of interfering with a respondent's care, control, or custody of the respondent's minor child;
- c. The action would affect the use or enjoyment of real property for which the respondent has a cognizable claim or would exclude a party from a shared dwelling;
- d. The petitioner, victim, or respondent to the petition is under 18 years of age; or
- e. The district court is unable to verify whether there are potentially conflicting or related orders involving the parties as required by RCW 7.105.105 or 7.105.555.³⁰

B. Venue

The protection order action generally should be filed in the county where the petitioner resides.³¹ However, in order to increase access, the petitioner may also file in:

1. The county where an act giving rise to the petition for a protection order occurred;
2. The county where a child to be protected by the order primarily resides;

²⁹ RCW 7.105.050(2) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.050>.

³⁰ RCW 7.105.050(1) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.050>.

³¹ RCW 7.105.075 <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.075>.

3. The county where the petitioner resided prior to relocating if relocation was due to the respondent's conduct; or
4. The court nearest to the petitioner's residence or former residence under subsection (3) of this section.³²

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 alleged to have been committed in the state of Washington.³³ 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.³⁴ A person who resides within the state, even if on a federal enclave, is still subject to the jurisdiction of a Washington court.³⁵

VIII. Fees

No filing fee may be charged for a petitioner seeking a sexual assault protection order.³⁶ Additionally, a petitioner seeking relief under 7.105 RCW may not be charged fees for service of process by a court or any public agency.³⁷ The Petitioner must be provided with the necessary number of certified copies, forms, and instructional brochures free of charge, including a copy of the service packet that consists of all documents that are being served on the respondent.³⁸ A respondent who is served electronically with a protection order must be provided a certified copy of the order free of charge upon request.³⁹

³² Id.

³³ RCW 4.28.185(1)(b) <http://app.leg.wa.gov/RCW/default.aspx?cite=4.28.185>.

³⁴ Id.

³⁵ 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).

³⁶ RCW 7.105.105(9)(a), <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.105>.

³⁷ Id.

³⁸ Id.

³⁹ Id.

IX. 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 prior service or notice of the hearing on the respondent.⁴⁰ At the conclusion of the hearing, the court may enter an ex parte temporary order.⁴¹

B. Notice of Hearing on Full Order

Before entry of a full order, the respondent must be served with all documents relied upon by the court in making its findings:

1. The petition for a protection order;
2. Any supporting declarations or other materials;
3. The notice of hearing on any temporary protection order issued by the court;
4. Any temporary order to surrender and prohibit weapons issued by the court; and
5. A blank confidential party information form as referred to in [RCW 7.105.115\(1\)](#).⁴²

The respondent shall confirm with the court during his or her first appearance all necessary contact and identifying information, and file the confidential party information form with the court.⁴³

Several methods of service authorized for protection order proceedings are set forth below. The stated purpose of these alternatives is to minimize delay and the need for more hearings (which can hinder access to justice and undermine judicial economy), to reduce costs, to provide actual notice to the respondent, and to simplify and modernize processes for petitioners, respondents, law enforcement, and the courts.⁴⁴ Forms for all types of service of process in protection order proceedings are available at www.courts.wa.gov/forms/.

1. Personal Service

Personal service is required in cases that:

- a. Require surrender of firearms;

⁴⁰ RCW 7.105.305(1) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.305>.

⁴¹ Id.

⁴² RCW 7.105.160(1) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.160>.

⁴³ Id.

⁴⁴ RCW 7.105.150(1) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.150>.

- b. Involve transferring the custody of a child or children from the respondent to the petitioner;
- c. Involve vacating the respondent from the parties' shared residence;
- d. Involve an incarcerated respondent; and
- e. Involve someone other than the vulnerable adult filing a petition for a vulnerable adult protection order.⁴⁵

In these cases where personal service is required, except in cases where a petition for a vulnerable adult protection order is filed by someone other than the vulnerable adult,⁴⁶ personal service must be made by law enforcement.⁴⁷ This entails, at a minimum, two timely attempts at personal service.⁴⁸ Moreover, to minimize the risk of harm to the petitioner for cases that require personal service, law enforcement should continue to attempt personal service up to the hearing date.⁴⁹

In cases where personal service is required, after two unsuccessful attempts, service shall be permitted by electronic means.⁵⁰ No formal motion is necessary.⁵¹

A hearing on a petition for a full order requires personal service upon the respondent no less than five court days prior to the hearing, unless waived by the nonmoving party.⁵² Service is completed on the day the respondent is personally served.⁵³

2. Electronic Service

Electronic service—by email, text message, social media applications, or other technologies—must be prioritized for all orders at the time of the issuance of temporary protection orders, except where personal service is required as discussed above.⁵⁴

In cases where personal service is required, once firearms and concealed pistol licenses have been surrendered and verified by the court, or there is evidence that the respondent does not possess firearms; the restrained party has been vacated from the shared residence; the custody of the child(ren) has been transferred per court order; or the

⁴⁵ RCW 7.105.150(1)(a)(i) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.150>.

⁴⁶ Personal service in these cases must be made by law enforcement unless the petitioner elects to have the respondent served by a competent person who is 18 years of age or older who is not a party to the case.

⁴⁷ RCW 7.105.150(1)(a)(ii).

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ RCW 7.105.150(1)(a)(iii).

⁵¹ RCW 7.105.150(1)(b)(ii).

⁵² RCW 7.105.165(1) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.165>.

⁵³ RCW 7.105.165(2).

⁵⁴ RCW 7.105.150(1)(b)(i) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.150>.

respondent is no longer incarcerated, subsequent motions and orders may be served electronically.⁵⁵

Court authorization of electronic service is not required unless personal service is required.⁵⁶ In those cases, either request of the petitioner or good cause for granting an order for electronic service, such as two failed attempts at personal service, are required to authorize service by electronic means.⁵⁷ No formal motion is necessary.⁵⁸

Respondent's email address, number for text messaging, and username or other identification on social media applications and other technologies, if known or available, must be provided by the petitioner to law enforcement in the confidential information form, and attested to by the petitioner as being the legitimate, current, or last known contact information for the respondent.⁵⁹

Electronic service must be made by a law enforcement agency unless the petitioner elects to have the respondent served by a competent person 18 years of age or older, who is not a party to the case.⁶⁰ Electronic service must be effected by transmitting copies of the petition, any supporting materials filed with the petition, notice of hearing, and any orders, or relevant materials for motions, to the respondent at the respondent's electronic address or the respondent's electronic account associated with email, text messaging, social media applications, or other technologies.⁶¹

Verification of service and notice is required and may be accomplished through read-receipt mechanisms, a response, a sworn statement from the person who effected service verifying transmission and any follow-up communications such as email or telephone contact used to further verify, or an appearance by the respondent at a hearing.⁶² Sworn proof of service must be filed with the court by the person who effected service.⁶³ Service is completed on the date of transmission.⁶⁴

3. Service by Mail

Service by mail is permitted when:

- a. Personal service was required, there have been two unsuccessful attempts at personal service, and electronic service is not possible, or

⁵⁵ Id.

⁵⁶ RCW 7.105.150(1)(b)(ii).

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ RCW 7.105.150(1)(b)(iii).

⁶⁰ Id.

⁶¹ RCW 7.105.150(1)(b)(iv).

⁶² Id.

⁶³ Id.

⁶⁴ RCW 7.105.165(2) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.165>.

- b. Personal service is not required and there have been two unsuccessful attempts at personal or electronic service.⁶⁵

If electronic service and personal service are not successful, the court is mandated to order service by mail without requiring additional motions to be filed by the petitioner.⁶⁶

The service must be made by a competent person 18 years of age or older, who is not a party to the case.⁶⁷ Copies of the materials to be served must be mailed, postage prepaid, one by ordinary first-class mail and a second copy must be sent by a form of mail requiring a tracking or certified information showing when and where it was delivered.⁶⁸ The envelopes must bear the return address where the petitioner may receive legal mail.⁶⁹ Service is deemed complete 10 days after the mailing of the two copies. Proof of service by mail must be filed with the court.

4. Service by Publication

Service by publication is disfavored because of the unreliability of actual notice and the costs to the petitioner. Service by publication must be approved by the court. It is permitted only in those cases where all other means of service have been unsuccessful or are not possible due to lack of any known physical or electronic address of the respondent.⁷⁰

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.⁷¹ The selected newspaper must be one of the three most widely circulated papers in the county.⁷² Service of the summons is considered complete when the publication has been made for three consecutive weeks.⁷³

The summons for publication service is particularized to a request for order of protection and must contain a brief statement of the reason for the petition and a summary of the provisions under the ex parte order.⁷⁴ The summons also 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.⁷⁵

⁶⁵ RCW 7.105.150(1)(c) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.150>.

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ Id.

⁶⁹ Id. Please also refer to Appendix I for information about the Address Confidentiality Program.

⁷⁰ RCW 7.105.150(1)(d).

⁷¹ Id.

⁷² Id.

⁷³ Id.

⁷⁴ Id.

⁷⁵ Id.

X. “No Wrong Door”

The court is required to assist the Petitioner to access the court in applying for relief under the protection order statutory scheme. A protection order petition must not be dismissed or denied on the basis that the conduct alleged by the petitioner would meet the criteria for issuance of another type of protection order.⁷⁶ Moreover, the court is required to consider the petitioner’s preference if the petition meets the criteria for a different type of protection order, and the court’s decision on the appropriate type of order must not be premised on alleviating any potential stigma on the respondent.⁷⁷

XI. Relief Available – Ex Parte & Full SAPOs

Whether an ex parte or full protection order, the court has broad discretion to enter relief as it deems proper and which fits many circumstances recited in the statute and further discussed below.

A. Restraint from Future Acts of Violence⁷⁸

The respondent may be restrained from committing domestic violence; nonconsensual sexual conduct or nonconsensual sexual penetration; sexual abuse; stalking; acts of abandonment, abuse, neglect, or financial exploitation against a vulnerable adult; and unlawful harassment.

B. Restraint from Contact⁷⁹

The respondent may be restrained from making any attempts to have contact with the petitioner or the petitioner’s family or household members who are minors or other members of the petitioner’s household, either directly, indirectly, or through third parties regardless of whether those third parties know of the order.

A protection order need not prohibit all contact. The court has discretion to craft an order appropriate to the circumstances. *See State v DeJarlais*, 136 Wn.2d 939, 969 P.2d 90 (1998) (protection order may allow some contact, such as by telephone; no requirement that all contact be prohibited. Order still enforceable.) To ensure that an order is enforceable, it is critical that any language about allowable contact is precise.

⁷⁶ RCW 7.105.100(5), <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.100>.

⁷⁷ *Id.*

⁷⁸ RCW 7.105.310(1)(a) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.310>.

⁷⁹ RCW 7.105.310(1)(b).

C. Exclusion from Shared Residence⁸⁰

The respondent may be excluded from the residence that the parties share.

D. Exclusion from Residence, Workplace, School⁸¹

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

E. Distance Prohibition⁸²

The respondent may be prohibited from knowingly coming within, or knowingly remaining within, a specified distance from a specified location. This includes, but is not limited to, a residence, school, day care, workplace, the protected party's person, and the protected party's vehicle. The presumptive specified distance is 1,000 feet unless the court for good cause finds that a shorter specified distance is appropriate.

F. Residential Provisions⁸³

If the parties have children in common, the protection order may make residential provisions with regard to their minor children; however, parenting plans as specified in Chapter 26.09 RCW shall not be required by the court within this proceeding. The court may not delay or defer relief under Chapter 7.105 RCW on the basis that the parties could seek a parenting plan or modification to a parenting plan in a different action. A protection order cannot be denied on the grounds that the parties have an existing parenting plan in effect. A protection order may suspend the respondent's contact with the parties' children under an existing parenting plan.

G. Treatment⁸⁴

The court may order the respondent to participate in a state-certified domestic violence perpetrator treatment program approved under [RCW 43.20A.735](#) or a state-certified sex offender treatment program approved under [RCW 18.155.070](#).

H. Mental Health or Chemical Dependency Evaluation⁸⁵

The court may order the respondent to obtain a mental health or chemical dependency evaluation. If the court determines that such an evaluation is necessary, the court shall clearly

⁸⁰ RCW 7.105.310(c).

⁸¹ RCW 7.105.310(d).

⁸² RCW 7.105.310(e).

⁸³ RCW 7.105.310(f).

⁸⁴ RCW 7.105.310(g) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.310>.

⁸⁵ RCW 7.105.310(h).

document the reason and provide a specific question or questions to be answered by the mental health professional. The court shall consider the ability of the respondent to pay for an evaluation. Under this statute, minors are presumed unable to pay. The parent or legal guardian is responsible for all costs unless the parent or legal guardian demonstrates an inability to pay.

I. School Transfer⁸⁶

The court, when issuing a protection 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, **shall** consider among the other facts of the case “the severity of the act; any continuing physical danger, emotional distress, or educational disruption to the petitioner; and the financial difficulty and educational disruption that would be caused by a transfer of the respondent to another school.”

The court, when issuing a protection order in such cases, may order that the respondent transfer to another school. If the court orders a transfer, the school district must provide the student comparable educational services in another setting. In such a case the district shall provide transportation at no cost to the respondent if the respondent’s parent or legal guardian is unable to pay for transportation. The court must send notice of the restriction to the school that the petitioner attends and the school that the respondent will attend.

J. Costs and Fees⁸⁷

The court may require the respondent to pay administrative court costs and service fees, and to reimburse the petitioner for costs incurred in bringing the action, including reasonable attorneys’ fees or limited license legal technician fees. Minors are presumed unable to pay. The parent or legal guardian is responsible for costs unless the parent or legal guardian demonstrates inability to pay.

K. Restraint from harassing, following, monitoring, surveilling, cyberstalking, or monitoring actions of the petitioner or the petitioner’s family or household members.⁸⁸

The court may restrain the respondent from harassing, following, monitoring, keeping under physical or electronic surveillance, cyber harassment as defined in RCW 9A.90.120, and using telephonic, audiovisual, or other electronic means to monitor the actions, location, or communication of the petitioner or the petitioner’s family or household members who are minors or other members of the petitioner’s household. “Communication” is defined to

⁸⁶ RCW 7.105.310(i).

⁸⁷ RCW 7.105.310(j) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.310>.

⁸⁸ RCW 7.105.310(k).

include both “wire communication” and “electronic communication” as defined in RCW 9.73.260.

L. Electronic Monitoring of Respondent⁸⁹

The court may require respondents who are not minors to submit to electronic monitoring. The order must specify who shall provide the monitoring services and the terms under which the monitoring must be performed. Such an order may also include a requirement that the respondent bear the costs of the monitoring. The court must consider the ability of the respondent to pay.

M. Surrender or Prohibition from Accessing Firearms, Dangerous Weapons, and Concealed Pistol License⁹⁰

NOTE: On November 22, 2022, the Division II Court of Appeals issued its decision in *State v. Flannery* concerning the constitutionality of Orders to Surrender Weapons. While a criminal case, the holding made direct reference to civil protection orders under RCW 26.50 and RCW 7.105.⁹¹ As of the time of publication of the updates to this chapter, the full impact of this case on Orders to Surrender Weapons and Compliance Hearings remained uncertain.

The statutes governing orders to surrender *and prohibit* weapons (OTSWs) were amended by E2SHB 1320 (2021) and SHB 1901 (2022) to require OTSWs on more types of orders and for courts to assess compliance. RCW 9.41.800⁹² now provides:

- (1) Any court when entering an order authorized under... Chapter 7.105 RCW... shall, upon a showing by a preponderance of the evidence, that a party has: Used, displayed, or threatened to use a firearm or other dangerous weapon in a felony, or is ineligible to possess a firearm under the provisions of RCW 9.41.040:
 - (a) Require the party to immediately surrender all firearms and other dangerous weapons;
 - (b) Require the party to immediately surrender any concealed pistol license issued under RCW 9.41.070;
 - (c) Prohibit the party from accessing, having in their control, possessing, purchasing, receiving, or attempting to purchase or receive, any firearms or other dangerous weapons;

⁸⁹ RCW 7.105.310(l).

⁹⁰ RCW 7.105.310(m).

⁹¹ See <https://www.courts.wa.gov/opinions/?fa=opinions.disp&filename=556821MAJ>

⁹² <http://app.leg.wa.gov/rcw/default.aspx?cite=9.41.800>.

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

(e) Direct law enforcement to revoke any concealed pistol license issued to the party, provided that the party has received notice and had an opportunity to be heard.

(2) During any period of time that the party is subject to a court order issued under Chapter 7.105 RCW that was:

(a) issued after a hearing for which the party received actual notice and had an opportunity to participate;⁹³

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

(c) (i) includes a finding that the party represents a credible threat to the physical safety of the intimate partner, protected person or child; OR (ii) by its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner, protected person, or child that would reasonably be expected to cause bodily injury, the court shall:

(A) Require the party to immediately surrender all firearms or other dangerous weapons;

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

(C) Prohibit the party from accessing, having in their custody or control, possessing, purchasing, receiving, or attempting to purchase or receive, any firearms or other dangerous weapons; and

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

(3) The court may order temporary surrender and prohibit the purchase of all firearms and other dangerous weapons, and any concealed pistol license, without notice to the other party if it finds, on the basis of the

⁹³ An agreed order without a hearing meets the requirements of this subsection.

moving affidavit or other evidence, that irreparable injury could result if an order is not issued until the time for response has elapsed.

(4) In addition to the provisions of subsections (1) and (3) 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.

(5) The requirements of subsections (1) and (4) of this section may be for a period of time less than the duration of the order.

(6) The court shall require the party to surrender all firearms or other dangerous weapons in their immediate possession or control or subject to their immediate possession or control, and any concealed pistol license issued under RCW 9.41.070, to the local law enforcement agency.

(7) If the court enters a protection order, restraining order, or no-contact order that includes an order to surrender firearms, dangerous weapons, and any concealed pistol license under this section:

(a) The order must be served by a law enforcement officer; and

(b) Law enforcement must immediately ensure entry of the order to surrender and prohibit weapons and the revocation of any concealed pistol license is made into the appropriate databases making the party ineligible to possess firearms and a concealed pistol license.

N. Possession and Use of Essential Personal Effects⁹⁴

The court may order possession and use of essential personal effects. If so ordering, the court shall list the essential personal effects with sufficient specificity to make it clear which property is included.

Personal effects may include pets. The court may order that a petitioner be granted the exclusive custody or control of any pet owned, possessed, leased, kept, or held by the petitioner, respondent, or minor child residing with either the petitioner or respondent, and may prohibit the respondent from interfering with the petitioner's efforts to obtain the pet. The court may also prohibit the respondent

⁹⁴ RCW 7.105.310(n) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.310>.

from knowingly coming within, or knowingly remaining within, a specified distance of specified locations where the pet is regularly found.

O. Order Use of a Vehicle⁹⁵

The statute permits the court discretion to order use of a vehicle by a party.

PRACTICE NOTE: *Some members of law enforcement urge caution in awarding use of a vehicle titled solely in the abuser's name. If the vehicle is reported stolen, the victim may be subjected to a felony stop.*

P. Restrict Abusive Litigation

The court may restrict the respondent from engaging in abusive litigation⁹⁶ or in frivolous filings against the petitioner, making harassing or libelous communications about the petitioner to third parties, or making false reports to investigative agencies.

The petitioner may request this relief as follows:

1. In the petition, or
2. By a separate, stand-alone motion.

Q. Restrain from Committing Acts of Against a Vulnerable Adult⁹⁷

The court may restrain the respondent from committing acts of abandonment, abuse, neglect, or financial exploitation against a vulnerable adult.

R. Require Accounting by Respondent of a Vulnerable Adult's Income/Other Resources⁹⁸

The court may require an accounting by the respondent of the disposition of the vulnerable adult's income or other resources.

S. Restrain Transfer of Respondent's and/or Vulnerable Adult's Property⁹⁹

⁹⁵ RCW 7.105.310(o) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.310>.

⁹⁶ Abusive litigation is defined in RCW 26.51.020(1) <https://app.leg.wa.gov/RCW/default.aspx?cite=26.51.020>.

⁹⁷ RCW 7.105.310(q).

⁹⁸ RCW 7.105.310(r).

⁹⁹ RCW 7.105.310(s).

If restraint of property transfer is order, the restraint is limited to a specified period that is not to exceed 90 days.

T. Order Financial Relief and Restrain the Transfer of Jointly Owned Assets¹⁰⁰

The court may in its discretion order financial relief and restrain transfer of jointly owned assets. The final allocation of any community or jointly owned property is subject to other civil proceedings between the parties.

U. Restrain Possession or Distribution of Intimate Images¹⁰¹

The court may restrain the respondent from possessing or distributing intimate images, including, but not limited to the following requirements of the respondent:

1. To take down and delete all intimate images and recordings of the petitioner in the respondent's possession or control; and
2. To cease any and all disclosure of those intimate images.

The court may also inform the respondent that it would be appropriate to ask third parties in possession or control of the intimate images of this protection order to take down and delete the intimate images so that the protection order may not be inadvertently violated.

PRACTICE NOTE: *The court may consider crafting this restraint to include a prohibition on altering intimate images to look like the petitioner. These may currently be referred to as “deepfakes.”*

An intimate image, as defined in [RCW 9A.86.010\(6\)\(b\)](#) means “any photograph, motion picture film, videotape, digital image, or any other recording or transmission of another person who is identifiable from the image itself or from information displayed with or otherwise connected to the image, and that was taken in a private setting, is not a matter of public concern, and depicts: (i) Sexual activity, including sexual intercourse as defined in [RCW 9A.44.010](#) and masturbation; or (ii) A person's intimate body parts, whether nude or visible through less than opaque clothing, including the genitals, pubic area, anus, or postpubescent female nipple.”

V. Other Relief Deemed Necessary¹⁰²

The statute broadly grants the court discretion to order other relief as it deems necessary for the protection of the petitioner and other family or household members who are

¹⁰⁰ RCW 7.105.310(t) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.310>.

¹⁰¹ RCW 7.105.310(u) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.310>.

¹⁰² RCW 7.105.310(v) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.310>.

minors or vulnerable adults for whom the petitioner has sought protection. This might include orders or directives to a law enforcement officer, as allowed under RCW 7.105.

XII. Duration of Orders

A. Ex Parte Orders

If an initial ex parte order is granted, it shall be granted for a fixed period not to exceed 14 days if there is personal service, or not later than 30 days if service by publication or mail is permitted.

If the respondent does not appear for the full hearing, and there is no proof of timely and proper service on the respondent, the court shall reissue any temporary protection order previously issued and reset the hearing date not later than 14 days from the reissuance date, or not later than 30 days from the reissuance date where the court permits service by mail or publication.¹⁰³ *These timeframes may be extended for good cause.*¹⁰⁴

If the court continues a hearing for any reason, the court shall reissue any temporary orders, including orders to surrender and prohibit weapons, issued with or without notice.¹⁰⁵

PRACTICE NOTE: *The reason ex parte orders cannot exceed 14 or 30 days is to prevent a due process violation against a respondent who does not have notice of the proceedings against them. 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 or other civil protection order beyond 14 or 30 days to a continued hearing date.*

B. Full Orders

A full order, issued after notice to the respondent and a hearing, may be granted for a fixed period of time or be permanent.¹⁰⁶ A permanent order should be set to expire 99 years from the date of issuance. Other than for antiharassment orders, the court shall not grant relief for less than one year unless the petitioner has so requested.¹⁰⁷

If the protection order restrains a respondent from contacting their minor children, the order must be for a fixed period not to exceed one year.¹⁰⁸ The court must advise the

¹⁰³ RCW 7.105.200(3) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.200>.

¹⁰⁴ Id.

¹⁰⁵ RCW 7.105.200(6) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.200>.

¹⁰⁶ RCW 7.105.315 <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.315>.

¹⁰⁷ Id.

¹⁰⁸ This limitation does not apply to protection orders issued under chapters [26.09](#), [26.26A](#), or [26.26B RCW](#).

petitioner that if they wish to continue protection for a period longer than one year, the petitioner may either petition for renewal pursuant to [RCW 7.105.405](#) or may seek relief pursuant to the provisions of chapters [26.09](#), [26.26A](#), or [26.26B RCW](#).

XIII. Written Findings Required If Ex Parte Order Not Granted

If an ex parte order is denied, the court shall still set a full hearing unless the court determines the petition does not contain prima facie allegations to support the issuance of any type of protection order.¹⁰⁹

If the court declines to issue an ex parte order as requested or declines to set a hearing, the court is mandated to state the reasons in writing.¹¹⁰ The court's denial of a motion for an ex parte order shall be filed with the court.¹¹¹

XIV. Evidence and Conduct of Hearings

A. Rules of Evidence Need Not Be Applied in Protection Order Hearings; Evidence May be Considered

The rules of evidence, except for the rules and statutes concerning privileges, the requirements of the rape shield statute under [RCW 9A.44.020](#), and Evidence Rules [412](#) [Sexual Offenses—Victim's Past Behavior] and [413](#) [Immigration Status], need not be applied during protection order hearings.¹¹² Hearsay is admissible at these hearings. The rationale for not applying the rules of evidence in protection order proceedings is to make the process more accessible to pro se litigants, who represent the majority of the parties in protection order proceedings. The court determines the weight to be given to all evidence presented.¹¹³

The court has broad discretion to evaluate the needs and procedures best suited to individual hearings based on consideration of the totality of the circumstances, including disparities that may be apparent in the parties' resources and representation by counsel.¹¹⁴

Hearings may be conducted upon information provided in the sworn petition, live testimony of the parties *should they choose to testify*, and any additional sworn declarations.¹¹⁵

¹⁰⁹ RCW 7.105.305(3) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.305>.

¹¹⁰ Id.

¹¹¹ Id.

¹¹² RCW 7.105.200(8) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.200>; ER 1101(c)(4) https://www.courts.wa.gov/court_rules/pdf/ER/GA_ER_11_01_00.pdf.

¹¹³ ER 104 https://www.courts.wa.gov/court_rules/pdf/ER/GA_ER_01_04_00.pdf

¹¹⁴ RCW 7.105.200(1) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.200>

¹¹⁵ RCW 7.105.200(5) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.200>.

Live testimony is limited. Other than the parties, live testimony of witnesses shall not be permitted unless the court finds that such testimony is necessary and material.¹¹⁶ If either party requests a continuance to allow for proper notice of witnesses, the court should consider the rebuttable presumption against delay and the purpose of this chapter to provide victims quick and effective relief in determining whether to continue the hearing.¹¹⁷

Recommended best practices for facilitation of receipt of evidence and exhibits are available at the Washington Courts website. The Washington State Supreme Court’s Gender and Justice Commission (GJC) was asked to report to the Washington State Legislature concerning these issues and others concerning protection orders.¹¹⁸ Those recommendations and resources concerning evidence and exhibits, along with others related to civil protection orders, are available at the Washington Courts:
<https://www.courts.wa.gov/?fa=home.sub&org=gjc&page=Legislative&layout=2&parent=work>.

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 regarding the alleged sexual assault, or when constitutionally required.¹¹⁹

A party intending to offer such evidence must file a written motion at least six judicial days before the protection order hearing.¹²⁰ The motion must include an offer of proof of the relevancy of the proposed evidence and reasonably specific information as to the date, time and place of past sexual conduct between the petitioner and respondent.¹²¹

If the court finds the offer of proof is relevant to the issue of the victim’s consent, the court shall conduct an *in camera* hearing.¹²² The court may not admit such evidence unless it determines that the evidence is relevant, and that the probative value of the evidence outweighs the danger of unfair prejudice.¹²³

The evidence shall be admissible at the hearing to the extent a court order specifies the evidence that may be admitted.¹²⁴ If the court finds that the motion and related documents should be sealed, it may enter an order sealing the documents.¹²⁵

¹¹⁶ Id.

¹¹⁷ Id.

¹¹⁸ See RCW 7.105.115 and 7.105.902.

¹¹⁹ RCW 7.105.200(9)(a); ER 412

https://www.courts.wa.gov/court_rules/pdf/ER/GA_ER_04_12_00.pdf.

¹²⁰ RCW 7.105.200(9)(b).

¹²¹ Id.

¹²² Id.

¹²³ Id.

¹²⁴ Id.

¹²⁵ Id.

C. Burden of Proof

1. Ex parte orders

The court *may* grant an ex parte order pending a full hearing when it appears from the petition and any additional evidence that the respondent has engaged in conduct against the petitioner that serves as a basis for a protection order under this chapter, and the petitioner alleges that serious immediate harm or irreparable injury could result if an order is not issued immediately without prior notice to the respondent.¹²⁶

2. Full Orders

The court *shall* issue a protection order if it finds by a preponderance of the evidence that the petitioner has proved the required criteria for obtaining a protection order under this chapter:¹²⁷

- a. **Domestic Violence Protection Order:** Petitioner has been subjected to domestic violence by the respondent;
- b. **Sexual Assault Protection Order:** Petitioner has been subjected to nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent;
- c. **Stalking Protection Order:** Petitioner has been subjected to stalking by the respondent;
- d. **Vulnerable Adult Protection Order:** Petitioner has been abandoned, abused, financially exploited, or neglected, or is threatened with abandonment, abuse, financial exploitation, or neglect by the respondent;
- e. **Extreme Risk Protection Order:** Respondent poses a significant danger of causing personal injury to self or others by having in the respondent's custody or control, purchasing, possessing, accessing, receiving, or attempting to purchase or receive, a firearm; or
- f. **Antiharassment or Unlawful Harassment Protection Order:** Petitioner has been subjected to unlawful harassment by the respondent.

D. Limitations Upon Consideration of Evidence

The petition must not be denied or dismissed because:

¹²⁶ RCW 7.105.305 <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.305>.

¹²⁷ RCW 7.105.225(1) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.225>.

1. Either party is a minor, unless provisions in Chapter 7.105 RCW specifically limit relief or remedies based upon a party's age;¹²⁸
2. The petitioner did not report the conduct giving rise to the petition to law enforcement;¹²⁹
3. A no-contact order or restraining order has been issued in a criminal proceeding or a domestic relations proceeding;¹³⁰
4. The relief sought by the petitioner may be available in a different action or proceeding, or criminal charges are pending against the respondent;¹³¹
5. The conduct alleged in the petition did not occur recently, or because of the passage of time since the last incident of conduct giving rise to the petition;¹³² or
6. The respondent no longer lives near the petitioner.¹³³

The court *shall not* require proof of physical injury of the petitioner.¹³⁴

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 petitioner engaged in limited consensual sexual touching.¹³⁵ Where there is evidence of intoxication, the court has an obligation to determine the petitioner's capacity to consent.¹³⁶

XV. Discovery

Discovery under the civil court rules, including, but not limited to, depositions, requests for production, or requests for admission, is disfavored in civil protection order cases.¹³⁷ It requires specific authorization by the court for good cause shown, upon a written motion of a party filed six judicial days before the hearing and served prior to the hearing.¹³⁸

¹²⁸ RCW 7.105.225(2)(a) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.225>.

¹²⁹ RCW 7.105.225(2)(b).

¹³⁰ RCW 7.105.225(2)(c).

¹³¹ RCW 7.105.225(2)(d).

¹³² RCW 7.105.225(2)(e).

¹³³ RCW 7.105.225(2)(f).

¹³⁴ RCW 7.105.225(3).

¹³⁵ *Id.*

¹³⁶ *Nelson v. Duvall*, 197 Wn. App. 441, 387 P.3d 1158 (2017). Please also see, *DeSean v. Sanger* (No. 38552-3-III) issued August 30, 2022: https://www.courts.wa.gov/opinions/pdf/385523_pub.pdf. (The court reversed and remanded the SAPO case for further proceedings due to the trial court's refusal to consider the affirmative defense that the petitioner was not mentally incapacitated or physically helpless.)

¹³⁷ RCW 7.105.200(7).

¹³⁸ *Id.*

Good cause for limiting discovery in protection order 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.¹³⁹

XVI. Existence of Criminal Investigation or Charge

An explanation of the parties' Fifth Amendment rights should be incorporated into the court's introductory remarks to all litigants at the protection order calendar. Refer to [Appendix E](#) for an introductory script template for the civil protection order calendar.

Continuance or delay due to pending criminal case is disfavored. If the respondent requests a continuance due to the pendency of a criminal case, the court must consider the following:

1. There is a rebuttable presumption against delay,¹⁴⁰ and
2. Courts are required to balance the eight *Olympic Pipeline*¹⁴¹ factors **on the record**. The competing interests that must be balanced include:
 - a. Implication of the Fifth Amendment privilege;
 - b. Similarities between civil and criminal cases;
 - c. Status of the criminal case;
 - d. Plaintiffs' interests and potential prejudice;
 - e. The burden on the party asserting the privilege;
 - f. Convenience and efficiency of the court;
 - g. Interests of non-parties to civil litigation; and
 - h. Public interest in the pending civil and criminal litigation.¹⁴²

Refer to [Appendix D](#) for a bench card re: addressing continuance requests when there are concurrent civil protection order and criminal proceedings.

¹³⁹ See the non-precedential decision in *Kantola v. Juvinal*, 150 Wn. App. 1007 (2009 unpublished) citing *Rhinehard v. Seattle Times Co.*, 98 Wn.2d 226, 256, 654 P.2d 673 (1982).

¹⁴⁰ RCW 7.105.200(4) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.200>;
RCW 7.105.400(4) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.400>.

¹⁴¹ 104 Wn. App. 338, 16 P.3d 45(2000).

¹⁴² *Id.*; RCW 7.105.200(4) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.200>;
RCW 7.105.400(4) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.400>.

XVII. Hearing Logistics

A. Civil Protection Order Hearings are “Special Proceedings”

Civil protection order proceedings supersede inconsistent civil court rules.¹⁴³ Courts should evaluate the needs and procedures best suited to individual hearings based on consideration of the totality of the circumstances, including disparities that may be apparent in the parties’ resources and representation by counsel.¹⁴⁴ See additional discussion at above at Section XV, Evidence and Conduct of Hearings.

B. Trauma-Informed Proceedings

In order to further the intent of Chapter 7.105 RCW, courts should employ practices and procedures that are trauma-informed. Treating litigants respectfully, minimizing delays, making the system less complex, and empowering litigants to make choices where possible, are key to a trauma-informed approach. [RCW 7.105.255](#) states that judicial officers should receive training on trauma-informed practices as part of their ongoing training.

In a medical setting, the Centers for Disease Control and Prevention¹⁴⁵ have identified six guiding principles to a trauma-informed approach:

- safety,
- trustworthiness and transparency,
- peer support,
- collaboration and mutuality,
- empowerment, voice and choice, and
- cultural, historical and gender issues.

The courts continue to discuss the issue of trauma-informed proceedings and provide educational opportunities to judicial officers.

C. Protecting the Safety and Privacy of the Parties

As in all cases involving interpersonal violence, there are additional safety concerns when both parties must appear in the same courtroom, either virtually or in-person.

¹⁴³ RCW 7.105.200(1).

¹⁴⁴ Id.

¹⁴⁵ https://www.cdc.gov/.../6_principles_trauma_info.htm.

PRACTICE NOTE: *The court should consider these safety concerns if eliciting testimony from the parties is necessary. It may be inappropriate, for example, to permit pro se parties to conduct questioning through direct or cross examination.*

In order to prevent contact between the parties, for in-person hearings, if possible, the court shall have petitioners and respondents gather in separate locations and enter/exit the courtroom at staggered times.¹⁴⁶ Where the option is available, the court should arrange for petitioners to leave the court premises first and to have court security escort petitioners to their vehicles or transportation.¹⁴⁷

PRACTICE NOTE: *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. And, when the calendar is initially called, the parties may be further directed to separate if necessary.*

Protection hearing proceedings are public, but with some limitations. Livestreaming or recording any protection order proceedings online is prohibited unless a waiver has been received from all parties or if the hearing is being conducted remotely/online and members of the public do not have in-person access to observe or listen to the hearing.¹⁴⁸ Further, courts should take appropriate measures in any hearing, whether remote or in the courtroom, to prevent members of the public or the parties from harassing or intimidating any party or witness to the case.¹⁴⁹ Suggested measures include disallowing members of the public from communicating with the parties or with the court during the hearing; ensuring court control over the microphone and viewing settings; and announcing prohibitions on allowing others to record the hearing without prior court approval.¹⁵⁰

D. Scheduling Hearings

1. Ex parte hearings

Courts shall prioritize hearings on petitions for ex parte temporary protection orders over less emergency proceedings.¹⁵¹

2. Uncontested hearings for default or continuance

Best practices suggest that the court should minimize the time parties are required to wait if the hearing will involve only the entry of a default or an uncontested order of continuance. These cases may be identified by calling them at the beginning of the calendar. Parties to protection order proceedings are often nervous or apprehensive. Requiring parties

¹⁴⁶ RCW 7.105.200(12) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.200>.

¹⁴⁷ Id.

¹⁴⁸ RCW 7.105.205(4) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.205>.

¹⁴⁹ RCW 7.105.205(5)(d).

¹⁵⁰ Id.

¹⁵¹ RCW 7.105.200(2)(a).

to sit through a full calendar until their case is called for a brief, non-contested hearing needlessly exacerbates stress and can discourage parties from following through with the protection order process. Moreover, there is an economic impact to increased wait times including missed wages, higher childcare costs, etc. that could lead to future attrition from the process.

Best practices suggest that the court should be cautious about entering an ex parte dismissal order against a petitioner or a default order against a respondent who fails to appear at the very beginning of the calendar. A litigant may be apprehensive about the protection order proceeding, may be fearful of encountering the opposing party at court, and may find the process confusing and intimidating, all of which may contribute to tardiness. To do justice and avoid extra paperwork or additional proceedings, the court may wish to give both the Petitioner and Respondent a “second call” after an appropriate delay (perhaps 15 minutes).

If the petitioner arrives late and after the court has entered an ex parte dismissal, so long as the respondent has not appeared at the hearing, the court may find it appropriate to immediately vacate the dismissal and enter appropriate orders.

If, however, the respondent was present when the court entered the dismissal and was released from the proceedings to leave the courtroom, the petitioner may need to refile the petition under the original case number.

3. Contested hearings

Best practices suggest that because of the sensitive nature of the proceedings, and the time the hearing may require, if sexual assault or domestic violence protection order hearings are set on a calendar with other matters, full hearings on these cases should be scheduled or delayed to the end of the calendar.

PRACTICE NOTE: *A recommended best practice for calling the calendar or scheduling protection order hearings is the following sequential order:*

- a. Cases in which there is no proof of service;*
- b. Cases in which only one party is present and the case will be dismissed or a default order entered;*
- c. On a combined docket where sexual assault protection order or domestic violence protection order cases are on the same calendar as other types of cases, the other types of cases in which both parties are present and ready to proceed with a full hearing;*
- d. Sexual assault protection order and domestic violence protection order cases in which both parties are present and ready to proceed with a full hearing.*

E. Remote Hearings

In order to enhance access for all parties, all hearings on civil protection orders may be conducted in person or remotely.¹⁵² Where possible, parties should be allowed to choose whether to appear in-person or remotely.

In the court's discretion, parties, witnesses, and others authorized by Chapter 7.105 RCW to participate in protection order proceedings may attend a hearing in person or remotely, including by telephone, video, or other electronic means where possible.¹⁵³ The court shall grant any request for a remote appearance unless the court finds good cause to require in-person attendance or attendance through a specific means.¹⁵⁴

Courts shall require assurances of identity of persons who appear by telephone, video, or other electronic means.¹⁵⁵ Courts may not charge fees for remote appearances.¹⁵⁶

The statute provides guidance to the courts for protection order hearings. If any parties or witnesses to a hearing are appearing remotely, the following apply:

1. **Instructions:**¹⁵⁷ Courts should include directions to access a hearing remotely and to request an interpreter or accommodation in the order setting the hearing and any order granting a party's request for a remote appearance.
2. **Minimize wait times and inform parties:**¹⁵⁸ Courts should attempt to give a party or witness appearing by telephone no more than a one-hour waiting time for the hearing to begin. For remote hearings, if the court anticipates a wait time longer than one hour, the court should inform them of the estimated hearing start time.
3. **Court Record:**¹⁵⁹ Courts should inform the parties before the hearing begins that the hearing is being recorded by the court, in what manner the public is able to view the hearing, how a party may obtain a copy of the recording of the hearing, and that recording or broadcasting any portion of the hearings by any means other than the court record is strictly prohibited without prior court approval.
4. **Language Access:**¹⁶⁰ Courts shall use technology that accommodates American sign language and other languages.

¹⁵² RCW 7.105.205(1) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.205>.

¹⁵³ RCW 7.105.205(2) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.205>.

¹⁵⁴ Id.

¹⁵⁵ RCW 7.105.205(3).

¹⁵⁶ Id.

¹⁵⁷ RCW 7.105.205(5)(a).

¹⁵⁸ RCW 7.105.205(5)(b).

¹⁵⁹ RCW 7.105.205(5)(c).

¹⁶⁰ RCW 7.105.205(5)(e).

5. **Safety & Privacy:**¹⁶¹ Courts should protect the privacy of telephone numbers, emails, and other contact information for parties, witnesses, and others authorized by chapter 7.105 RCW to participate in the protection order proceedings, and inform them of these safety considerations. Warnings not to state their addresses or phone numbers, and to ensure that background surroundings do not reveal their location should be provided in materials made available to people appearing remotely.

PRACTICE NOTE: *People who observe in-person proceedings are not required to identify themselves upon entry of the courtroom. Courts should consider extending this practice to those who are observing remote proceedings by allowing them to identify themselves as “observer.”*

6. **Party unable to attend remotely:**¹⁶² Courts should provide the parties in orders setting the hearing with a telephone number and an email address for the court, which the parties may use to inform the court if they have been unable to appear remotely for the hearing. Before dismissing or granting a petition due to the nonappearance of either party at a remote hearing or the court not being able to reach the party via telephone or video, the court shall check for any notifications to the court regarding issues with remote access or other technological difficulties. If any party has provided such notification to the court, the court shall not dismiss or grant the petition, but shall reset the hearing by continuing it and reissuing any temporary order in place. If a party was unable to provide notification due to issues with remote access or other technological difficulties on the day of the hearing prior to the court’s ruling, that party may seek relief via a motion for reconsideration.
7. **Full & Meaningful Participation:**¹⁶³ A party attending a hearing remotely who is unable to participate in the hearing outside the presence of others who reside with the party, but who are not part of the proceeding (e.g. children), and who asserts that the presence of those individuals may hinder their ability to fully and meaningfully participate in the hearing, may request a continuance on that basis. Such requests may be granted in the court’s discretion and the court may consider the rebuttable presumption against delay and the purpose of this chapter to provide victims quick and effective relief.

¹⁶¹ RCW 7.105.205(5)(f).

¹⁶² RCW 7.105.205(5)(g) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.205>.

¹⁶³ RCW 7.105.205(5)(h).

F. Advocates and Support Persons

1. Sexual Assault and Domestic Violence Advocates

A sexual assault¹⁶⁴ or domestic violence advocate,¹⁶⁵ shall be allowed to accompany the petitioner, or appear remotely with the petitioner, confer with the petitioner during court proceedings, and assist petitioners with their protection orders.¹⁶⁶ This provision is in effect whether or not the petitioner has an attorney.¹⁶⁷

Sexual assault or domestic violence advocates shall be allowed to assist petitioners with their protection orders, and are not engaged in unauthorized practice of law when providing assistance under this section.¹⁶⁸ They shall not provide legal representation nor interpretation services, and unless an advocate seeks to speak directly to the court, they shall not be required to be identified on the record beyond stating their role as a sexual assault or domestic violence advocate and identifying the program for which they work or volunteer.

Communications between the petitioner and a sexual assault and domestic violence advocate are protected as provided by [RCW 5.60.060](#).

2. Protection Order Advocates

Whether or not the petitioner has retained an attorney, a protection order advocate¹⁶⁹ must be allowed to accompany the petitioner to any legal proceeding including, but not limited to, sitting or standing next to the petitioner, appearing remotely with the petitioner, and conferring with the petitioner during court proceedings, or addressing the court when invited to do so.¹⁷⁰

The protection order advocate shall not provide legal representation nor interpretation services, and unless a protection order advocate seeks to speak directly to the court, protection order advocates shall not be required to be identified on the record beyond stating

¹⁶⁴ Pursuant to RCW 5.60.060(7)(a), 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.

¹⁶⁵ Pursuant to RCW 5.60.060(80)(a), a “domestic violence advocate” is an employee or volunteer from a community-based domestic violence program or human services program that provides information, advocacy, counseling, crisis intervention, emergency shelter, or support to victims of domestic violence and who is not employed by, or under the direct supervision of, a law enforcement agency, a prosecutor's office, or the child protective services section of the department of children, youth, and families.

¹⁶⁶ RCW 7.105.250(1) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.250>.

¹⁶⁷ Id.

¹⁶⁸ Id.

¹⁶⁹ A protection order advocate is any employee or volunteer from a program that provides, as some part of its services, information, advocacy, counseling, or support to persons seeking protection orders. RCW 7.105.250(2)(a) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.250>.

¹⁷⁰ RCW 7.105.250(2) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.250>.

their role as a protection order advocate and identifying the program for which they volunteer.¹⁷¹

A protection order advocate who is not employed by, or under the direct supervision of, a law enforcement agency, a prosecutor's office, the child protective services section of the department of children, youth, and families, or other governmental entity, has the same privileges, rights, and responsibilities as a sexual assault advocate and domestic violence advocate under [RCW 5.60.060](#).¹⁷²

3. Support Persons

Whether or not the petitioner has retained an attorney or has an advocate, the petitioner shall be allowed a support person to accompany the petitioner to any legal proceeding including, but not limited to, sitting or standing next to the petitioner, appearing remotely with the petitioner, and conferring with the petitioner during court proceedings.¹⁷³

The support person may be any third party of the petitioner's choosing, provided that the support person shall not provide legal representation nor interpretation services.¹⁷⁴

A support person who is not employed by, or under the direct supervision of, a law enforcement agency, a prosecutor's office, the child protective services section of the department of children, youth, and families, or other government entity, may not, without the consent of the petitioner, be examined as to any communication between the petitioner and the support person regarding the petition.¹⁷⁵

G. Appointment of Counsel for the Petitioner

The court may appoint counsel to represent the petitioner if the respondent is represented by counsel, subject to funding.¹⁷⁶

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). A list of legal resources for civil protection orders is also available at the Washington Courts: https://www.courts.wa.gov/content/publicUpload/GJCOM/1320_Legal_Resources.pdf.

¹⁷¹ Id.

¹⁷² RCW 7.105.250(2)(d).

¹⁷³ RCW 7.105.250(3).

¹⁷⁴ Id.

¹⁷⁵ Id.

¹⁷⁶ RCW 7.105.240 <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.240>.

H. Interpreters

The court shall appoint a credentialed or duly qualified interpreter for any party who is deaf, hard of hearing, deaf-blind, has a speech impairment and cannot readily understand or communicate in spoken language, or any party who cannot readily speak or understand the English language.¹⁷⁷

The court shall not appoint an advocate for the party to provide interpretation services.¹⁷⁸ Moreover, the same interpreter shall not serve parties on both sides of the proceeding except when on the record. The interpreter appointed by the court for the proceeding cannot be the same interpreter appointed for any court-ordered assessments, unless the court finds good cause on the record to do so because it is not possible to obtain more than one interpreter for the proceeding, or the safety of the litigants is not compromised, or any other reasons identified by the court.¹⁷⁹

Once an interpreter has been appointed for a party, the party shall no longer be required to make further requests for the appointment of an interpreter for subsequent hearings or proceedings. The clerk shall identify the party as a person who needs interpreter services and the clerk or the court administrator shall be responsible for ensuring that an interpreter is available for every subsequent hearing.¹⁸⁰ When a hearing is conducted through telephone, video, or other electronic means, the court must make appropriate arrangements to permit interpreters to serve the parties and the court as needed.¹⁸¹

The interpreter shall interpret for the party meeting with either counsel or court staff, or both, for the purpose of preparing forms and participating in the hearing and court-ordered assessments, and the interpreter shall sight translate any orders.¹⁸² Courts shall make a private space available for parties, counsel, and/or court staff and interpreters to sight translate any written documents or to meet and confer.¹⁸³

¹⁷⁷ RCW 7.105.245 <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.245>; See also GR 11 (Court Interpreters), GR 11.2 (Code of Conduct for Court Interpreters), GR 11.3 (Remote Interpretation) and GR 11.4 (Team Interpretation). Additional best practices, bench cards and interpreter resources for interpreters may be found at the Washington Courts website: https://www.courts.wa.gov/programs_orgs/pos_interpret/index.cfm?fa=pos_interpret.display&fileName=interpreterCommission.

¹⁷⁸ Id.

¹⁷⁹ RCW 7.105.245(5).

¹⁸⁰ RCW 7.105.245(3).

¹⁸¹ RCW 7.105.245(7).

¹⁸² RCW 7.105.245(4) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.245>.

¹⁸³ RCW 7.105.245(6).

XVIII. Sexual Assault No-Contact Orders

A petitioner protected by a sexual assault no-contact order entered in a criminal proceeding under [RCW 9A.44.210](#) or by a criminal no-contact order may also seek a civil protection order.¹⁸⁴

If the defendant is acquitted or the criminal charges are dismissed, a sexual assault no-contact order issued in conjunction with the criminal case will be terminated unless the alleged victim files an independent action for a civil sexual assault protection order sexual assault protection order, in which case the court may keep the sexual assault no-contact order in the criminal case in place until a full hearing is conducted in the civil case.¹⁸⁵

The legislature has disavowed the prior practice to dismiss or suspend a criminal prosecution in exchange for the issuance of a civil protection order.¹⁸⁶

XIX. Mutual Protection Orders Disallowed

The court shall not issue a full protection order to any party except upon notice to the respondent and the opportunity for a hearing pursuant to a petition or counter-petition filed and served by the party seeking relief in accordance with this chapter.¹⁸⁷ Except as provided in [RCW 7.105.210](#) regarding realignment of the parties, the court shall not issue a temporary protection order to any party unless the party has filed a petition or counter-petition for a protection order seeking relief in accordance with this chapter.¹⁸⁸

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.¹⁸⁹

PRACTICE NOTE: *After ensuring notice and an opportunity to be heard, if mutual orders are determined appropriate, the court should enter a separate order protecting each party, together with appropriate Law Enforcement Information Sheets for delivery to law enforcement.*

¹⁸⁴ RCW 7.105.225(2)(c) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.225>; RCW 7.105.105(6) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.105>.

¹⁸⁵ RCW 9A.44.210(2)(b) <https://app.leg.wa.gov/rcw/default.aspx?cite=9A.44.210>.

¹⁸⁶ RCW 7.105.375 <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.375>.

¹⁸⁷ RCW 7.105.310(4)(b) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.310>.

¹⁸⁸ Id.

¹⁸⁹ See generally, J. Zorza, *What is Wrong with Mutual Orders of Protection?*, 1 Fam. And Intimate Partner Violence Q. 127, 2008

XX. Modification or Termination of Protection 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.¹⁹⁰

A respondent's motion to terminate or modify an existing protection order must include a declaration setting forth the facts that support their request, and nonmoving parties may file opposing declarations.¹⁹¹ 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 court's finding of adequate cause.¹⁹²

In order for the protection order to be modified or terminated, the respondent must prove by a preponderance of the evidence that there has been "a substantial change in circumstances such that the respondent will not resume, engage in, or attempt to engage in acts of domestic violence, in cases involving domestic violence protection orders; physical or nonphysical contact, in cases involving sexual assault protection orders; acts of stalking, in cases involving stalking protection orders; or acts of unlawful harassment, in cases involving antiharassment protection orders."¹⁹³

The petitioner has no burden to prove a current reasonable fear of harm by the respondent to prevent termination or modification.¹⁹⁴

In determining whether there has been a substantial change in circumstances, the court may consider the following unweighted factors, and no inference is to be drawn from the order in which the factors are listed:

1. Whether the respondent has committed or threatened sexual assault, domestic violence, stalking, or other harmful acts against the petitioner or any other person since the protection order was entered;
2. Whether the respondent has violated the terms of the protection order and the time that has passed since the entry of the order;
3. Whether the respondent has exhibited suicidal ideation or attempts since the protection order was entered;
4. Whether the respondent has been convicted of criminal activity since the protection order was entered;

¹⁹⁰ RCW 7.105.500(1) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.500>.

¹⁹¹ RCW 7.105.500(2) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.500>.

¹⁹² Id.

¹⁹³ RCW 7.105.500(3).

¹⁹⁴ Id.

5. Whether the respondent has either acknowledged responsibility for acts of sexual assault, domestic violence, stalking, or behavior that resulted in the entry of the protection order, or successfully completed state-certified perpetrator treatment or counseling since the protection order was entered;
6. Whether the respondent has a continuing involvement with drug or alcohol abuse, if such abuse was a factor in the protection order;
7. Whether the petitioner consents to terminating the protection order, provided that consent is given voluntarily and knowingly; or
8. Other factors relating to a substantial change in circumstances.¹⁹⁵

In determining whether there has been a substantial change in circumstances, the court may not base its determination on the fact that time has passed without a violation of the order.¹⁹⁶

Regardless of whether there is a substantial change in circumstances, the court may decline to terminate a protection order if it finds that the acts of domestic violence, sexual assault, stalking, unlawful harassment, and other harmful acts that resulted in the issuance of the protection order were of such severity that the order should not be terminated.¹⁹⁷

For most protection orders, including the Sexual Assault Protection Order (SAPO), the respondent is limited to filing no more than one motion to terminate or modify a full order in every twelve-month period that the order is in effect, starting from the date of the order and continuing through any renewal period.¹⁹⁸

If a person who is protected by a protection order has a child or adopts a child after a protection order has been issued, but before the protection order has expired, the petitioner may seek to include the new child in the order of protection on an ex parte basis if the child is already in the physical custody of the petitioner.¹⁹⁹ However if the restrained person is the legal or biological parent of the child, a hearing must be set and notice given to the restrained person prior to final modification of the full protection order.²⁰⁰

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.²⁰¹

¹⁹⁵ RCW 7.105.500(4) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.500>.

¹⁹⁶ RCW 7.105.500(5).

¹⁹⁷ RCW 7.105.500(6).

¹⁹⁸ RCW 7.105.500(7).

¹⁹⁹ RCW 7.105.500(8).

²⁰⁰ Id.

²⁰¹ RCW 7.105.500(9).

XXI. Renewal of Full Protection Orders

There is no statutory limit to the number of times a full protection order for a fixed period may be renewed. A petitioner may apply for renewal of the full protection order by filing a petition for renewal at any time within 90 days prior to the order's expiration date.²⁰² The motion for renewal must state the reasons the petitioner seeks to renew the protection order. Upon receipt of a motion for renewal, the court shall order a hearing, which must be not later than 14 days from the date of the order.²⁰³

PRACTICE NOTE: *If the petition for renewal is filed with within the 90-day period before the order expires, but more than 14 days from the expiration date, the court should set a hearing within 14 days from the filing of the petition. If the court grants the renewal within this timeframe, it should **renew from the date the existing order is set to expire** to avoid having duplicate orders in the system.*

Service must be made on the respondent not less than five judicial days before the hearing, as provided in [RCW 7.105.150](#).²⁰⁴

The petitioner bears no burden of proving that he or she has a current reasonable fear of harm by the respondent.²⁰⁵

A. Uncontested Renewal

If the motion for renewal is uncontested and the petitioner seeks no modification of the order, the order may be renewed on the basis of the petitioner's motion and statement of the reason for the requested renewal.²⁰⁶

B. Contested Renewal

The court shall grant the motion for renewal unless the respondent proves by a preponderance of the evidence that there has been a substantial change in circumstances and the following:

1. For a domestic violence protection order, that the respondent proves that the respondent will not resume acts of domestic violence against the petitioner or the petitioner's family or household members who are minors or vulnerable adults when the order expires;
2. For a sexual assault protection order, that the respondent proves that the respondent will not engage in, or attempt to engage in, physical or nonphysical contact with the petitioner when the order expires;

²⁰² RCW 7.105.405(1) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.405>.

²⁰³ Id.

²⁰⁴ Id.

²⁰⁵ RCW 7.105.405(3) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.405>.

²⁰⁶ RCW 7.105.405(2).

3. For a stalking protection order, that the respondent proves that the respondent will not resume acts of stalking against the petitioner or the petitioner's family or household members when the order expires;
4. For a vulnerable adult protection order, that the respondent proves that the respondent will not resume acts of abandonment, abuse, financial exploitation, or neglect against the vulnerable adult when the order expires; or
5. For an antiharassment protection order, that the respondent proves that the respondent will not resume harassment of the petitioner when the order expires.²⁰⁷

In determining whether there has been a substantial change in circumstances, the court may consider the following unweighted factors, and no inference is to be drawn from the order in which the factors are listed:

1. Whether the respondent has committed or threatened sexual assault; domestic violence; stalking; abandonment, abuse, financial exploitation, or neglect of a vulnerable adult; or other harmful acts against the petitioner or any other person since the protection order was entered;
2. Whether the respondent has violated the terms of the protection order and the time that has passed since the entry of the order;
3. Whether the respondent has exhibited suicidal ideation or attempts since the protection order was entered;
4. Whether the respondent has been convicted of criminal activity since the protection order was entered;
5. Whether the respondent has either: acknowledged responsibility for acts of sexual assault, domestic violence, or stalking, or acts of abandonment, abuse, financial exploitation, or neglect of a vulnerable adult, or behavior that resulted in the entry of the protection order; or successfully completed state-certified perpetrator treatment or counseling since the protection order was entered;
6. Whether the respondent has a continuing involvement with drug or alcohol abuse, if such abuse was a factor in the protection order; and
7. Other factors relating to a substantial change in circumstances.²⁰⁸

²⁰⁷ RCW 7.105.405(4).

²⁰⁸ RCW 7.105.405(5) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.405>.

In determining whether there has been a substantial change in circumstances for respondents under the age of 18, or in determining the appropriate duration for an order, the court shall consider the circumstances surrounding the respondent's youth at the time of the initial behavior alleged in the petition for a protection order.²⁰⁹ The court shall consider developmental factors, including the impact of time of a youth's development, and any information the minor respondent presents about his or her personal progress or change in circumstances.²¹⁰

The court shall not deny a motion to renew a protection order for any of the following reasons:

1. The respondent has not violated the protection order previously issued by the court;
2. The petitioner or the respondent is a minor;
3. The petitioner did not report the conduct giving rise to the protection order, or subsequent violations of the protection order, to law enforcement;
4. A no-contact order or a restraining order that restrains the respondent's contact with the petitioner has been issued in a criminal proceeding or in a domestic relations proceeding;
5. The relief sought by the petitioner may be available in a different action or proceeding;
6. The passage of time since the last incident of conduct giving rise to the issuance of the protection order; or
7. The respondent no longer lives near the petitioner.²¹¹

The terms of the original protection order must not be changed on a motion for renewal unless the petitioner has requested the change.²¹²

The court may renew the protection order for another fixed time period of no less than one year, or may enter a permanent order as provided in this section.²¹³ If the protection order includes the parties' children, a renewed protection order may be issued for more than one year, subject to subsequent orders entered in a proceeding under Chapter 26.09, 26.26A, or 26.26B RCW.²¹⁴

²⁰⁹ RCW 7.105.405(12).

²¹⁰ Id.

²¹¹ RCW 7.105.405(6) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.405>.

²¹² RCW 7.105.405(7).

²¹³ RCW 7.105.405(8).

²¹⁴ RCW 7.105.405(9).

The court may award court costs, service fees, and reasonable attorneys' fees to the petitioner as provided in [RCW 7.105.310](#).²¹⁵

If the court declines to renew the protection order, the court shall state, in writing in the order, the particular reasons for the court's denial.²¹⁶ If the court declines to renew a protection order that had restrained the respondent from having contact with children protected by the order, the court shall determine on the record whether the respondent and the children should undergo reunification therapy.²¹⁷ Any reunification therapy provider should be made aware of the respondent's history of domestic violence and should have training and experience in the dynamics of intimate partner violence.²¹⁸

XXII. Entry of Protection Order Data

A. Clerk of the Court

The clerk of the court shall enter any full or temporary civil protection order granted under Chapter 7.105 RCW into a statewide judicial information system on the same day such order is issued, if possible, *but no later than* the next judicial day.²¹⁹

A copy of a civil protection order granted under Chapter 7.105 RCW, including both full and temporary protection orders, must be forwarded immediately by the clerk of the court, *by electronic means if possible*, to the appropriate law enforcement agency specified in the order.²²⁰

B. Law Enforcement

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.²²¹ The order must remain in the computer until the expiration date specified in the order.²²²

If the court has issued an order that prohibits the respondent from possessing or purchasing a firearm, the law enforcement agency shall also enter the order into the national instant criminal background check system and any other federal or state computer-based systems used by law enforcement or others to identify prohibited purchasers of firearms.²²³

²¹⁵ RCW 7.105.405(10).

²¹⁶ RCW 7.105.405(11).

²¹⁷ Id.

²¹⁸ Id.

²¹⁹ RCW 7.105.325(1) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.325>.

²²⁰ RCW 7.105.325(2).

²²¹ Id.

²²² Id.

²²³ Id.

The order must remain in each system for the period stated in the order, and the law enforcement agency shall only expunge orders that have expired or terminated from the system.²²⁴

Entry into the law enforcement information system serves as notice to all law enforcement agencies that the order exists.²²⁵ The civil protection order is fully enforceable in any county in Washington.²²⁶

The information entered by law enforcement into the computer-based criminal intelligence information system must include notice to law enforcement about how the order was served – personally, by electronic means, publication, or mail.²²⁷

If a law enforcement agency receives a protection order for entry or service that is outside of its jurisdiction, that agency may enter and serve the order OR may forward it to the appropriate law enforcement agency for entry and service, and shall provide documentation back to the court verifying which law enforcement agency has entered and will serve the order.²²⁸

XXIII. Enforcement of Protection Orders

A respondent may not be subjected to penalties for violation of a civil protection order unless the respondent has knowledge of the order.²²⁹

A knowing violation of a domestic violence protection order, sexual assault protection order, stalking protection order, or vulnerable adult protection order is punishable under [RCW 7.105.450](#).

A knowing violation of an antiharassment protection order is punishable under [RCW 7.105.455](#).

A knowing violation of an extreme risk protection order is punishable under [RCW 7.105.460](#).

When a party alleging a violation of a civil protection order states that the party is unable to afford private counsel and asks the prosecuting attorney for the county or the attorney for the municipality in which the order was issued for assistance, that attorney shall initiate and prosecute a contempt proceeding if there is probable cause to believe that the

²²⁴ Id.

²²⁵ Id.

²²⁶ Id.

²²⁷ RCW 7.105.325(3).

²²⁸ RCW 7.105.325(4).

²²⁹ RCW 7.105.465 <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.465>.

violation occurred.²³⁰ In this action, the court may require the violator of the order to pay the costs incurred in bringing the action, including a reasonable attorney's fee.²³¹

XXIV. 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.²³²

A domestic violence protection order issued from Canada as defined by RCW 26.55.010²³³ may be entitled to enforcement as well.²³⁴

XXV. 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 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*²³⁵ factors before issuing a ruling.²³⁶ There is a presumption of openness for court records in Washington;²³⁷ however, GR 15(c)(2) provides that the court may determine if 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....”²³⁸

²³⁰ RCW 7.105.470 <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.470>.

²³¹ Id.

²³² 18 U.S.C. §§ 2265(a) & (b), 2266(5); RCW 7.105.450(1)

<https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.450>.

²³³ <https://app.leg.wa.gov/RCW/default.aspx?cite=26.55.010>.

²³⁴ RCW 7.105.450 <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.450>.

²³⁵ *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982)

²³⁶ *State v. Waldon*, 148 Wn. App. 952, 202 P.3d 325 (2009)

²³⁷ *See Ruffer v. Abbott Labs.*, 154 Wn.2d 530, 540, 114 P.3d 1182 (2005)

²³⁸ GR 15(c)(2)

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

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*:²³⁹

- a. The proponent of sealing must make some showing of the need therefor, showing a “serious and imminent threat to some other important interest.”²⁴⁰
- 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.”²⁴¹
- e. “The order must be no broader in its application or duration than necessary to serve its purpose.”²⁴²

²³⁹ *State v. Ishikawa*, supra at 37-39; see also *State v. Bone-Club*, 128 Wn.2d 254, 906 P.2d 325 (1995)

²⁴⁰ *Id.* at 37

²⁴¹ *Id.* at 38

²⁴² *Id.* at 39