



REPORT TO THE LEGISLATURE
Laws of 2010, Ch. 274 (ESHB 2777)
Washington State Supreme Court Gender and Justice Commission
Washington State Administrative Office of the Courts
December 2011
PROCESS TO RECONCILE DUPLICATE OR
CONFLICTING PROTECTION ORDERS

INTRODUCTION

Pursuant to Section 310 of Chapter 274, Laws of 2010 (ESHB 2777), this report details the proposed guidelines for the process to reconcile duplicate or conflicting protection orders issued under Chapters 10.99, 26.09, 26.26 and 26.50 RCW. As part of that bill, the Washington State Administrative Office of the Courts (AOC), through the Washington State Supreme Court Gender and Justice Commission, was assigned the task of establishing the guidelines.

The guidelines for the process must:

- Allow any party named in a no-contact or protection order to petition to reconcile duplicate or conflicting orders; and
- Address no-contact and protection order data sharing between court jurisdictions in the state.

This report recommends policies for adoption by Washington State Courts. The report also acknowledges that the proposed policies will not eliminate conflicting and duplicative orders but is a first step in the implementation of comprehensive and consistent practices among and within our courts.

The report also discusses how the involvement of all entities that work with victims of domestic violence and are part of the law enforcement, legal and judicial systems is required to effectively reduce or eliminate duplicative or conflicting orders.

The report concludes with recommendations for systemic action.

METHODOLOGY

Understanding that a successful outcome requires broad participation, the Commission developed and engaged in a process that included participation by judicial officers, court managers and staff, prosecuting attorneys, law enforcement, elected county clerks, advocates, and defense and family lawyers. This resulted in seven meetings in counties throughout the state with representatives from the above-mentioned entities.

The Commission selected two large counties, two medium sized counties, two small counties, and King County to determine if there were situations or practices uniquely based on size and geographical location. Meetings were held in Benton/Franklin, Chelan, Clark, King, Skagit, and Stevens/Ferry/Pend Oreille counties.

At the conclusion of the meetings, a committee comprised of Commission members and representatives of the groups met and drafted recommendations. Comments on the recommendations were solicited from those who attended the state wide meetings as well as judicial officers, court managers, and elected county clerks.

GUIDELINES

Guideline One: Information systems are checked to determine if there is an existing order before another one is issued.

Discussion: The checking of judicial information systems before the issuance of a new protective or no-contact order is critical because conflicting orders create enormous problems for law enforcement, litigants, and prosecutors. As discovered in the statewide meetings, law enforcement makes decisions about whether or not a protective order has been criminally violated while both parties, often at the same time, are explaining why their order is valid and others are not. At times, the officers will contact their supervisors to seek direction. Some law enforcement personnel explained that at times, because of multiple conflicts in orders, no action is taken because they are unable to determine which order is to be followed. Consequently, a person who has been victimized by violation of a domestic violence protection or no-contact order finds himself or herself in a potentially dangerous situation and law enforcement may lack clarity about how to enforce the law.

Until a system is in place that allows judicial officers to see the orders and contents of those orders, this guideline will assure they are at a minimum aware of the existence of other orders. Finding out whether there are other orders before issuing a new order enables the judicial officer to determine whether an additional order is needed, and if so, to make the provisions of the second order align with the provisions in the first order as much as possible. When judicial officers issue new orders, they can inform the parties that all court orders must be obeyed, including newly issued orders which may conflict with provisions of previously issued orders, and they can inform parties of available local processes for reconciling conflicting provisions.

Current court information systems provide information regarding existing orders. Several entities could check for the existence of these orders: court staff, judicial officers, the prosecuting attorney, and the elected county clerk. Each jurisdiction needs to decide who will assume responsibility for checking the information systems. The check could occur when:

- prosecutors, pursuant to Section 301 of Chapter 274, Laws of 2010 (ESHB 2777), provide the courts with notification of any other existing orders for criminal cases;

- a judicial officer issues a criminal no-contact order at a pretrial hearing (e.g. first appearance or arraignment) or at the time of sentencing;
- a petitioner files a protection order in the clerk's office;
- a case is filed in family court or during a dissolution;
- an attorney or advocate is assisting a victim in navigating the court system; or
- a judicial officer is requested to sign an order in a civil proceeding.

Guideline Two: Within a county in which an order has been entered, a process is established to notify the originating court that another court in the same county has issued a new order involving the same parties and identifying any conflicts between the original order and the new order.

Discussion: Even though the Judicial Information System documents existing orders, this system does not include the specific conditions of the order. All courts that have parties in common should be informed of the conditions filed by their fellow judicial officers. This affords judicial officers the ability to make informed decisions by having more complete information and take prior order conditions into account. In addition, notification allows for the revision of orders to eliminate conflicts.

Notification informs the courts that conflicting orders may exist, but does not ensure reconciliation of orders. Some conflicts will be inevitable, as circumstances between parties may change, new acts may occur or new cases may be filed which require additional orders or more restrictive provisions. This will require future action as noted in the recommendation section.

Jurisdictions should determine how best for the notification to take place. For example, prosecutors could provide the notice in criminal cases, judicial officers or their staff could provide the notice, or clerks of the issuing court could provide notice.

Guideline Three: There is a process to reconcile conflicting and duplicative orders.

Discussion: One problem that surfaced was conflicts due to inconsistent routine conditions such as the distance a person is to stay away from the protected party. This problem can be intensified when it was discovered a significant challenge for others in examining the orders was legibility of things hand written on the orders. In response to this problem, the Administrative Office of the Courts, through the Pattern Forms Committee and feedback gleaned from this project, has revised the forms adding standard language and a checkbox format.

Another problem is the lack of available information at the time of the hearing. For example, a criminal court judge frequently has limited information at the first hearing when a no-contact order is issued while family court judicial officers may have more extensive information provided by attorneys and in proposed parenting plans.

One solution discussed and presently modeled in several counties is having a judicial officer designated to resolve the conflicts. It could be a superior, district or municipal court judicial officer.

In addition, some of the larger counties already have electronic court records that allow them to view existing orders. Providing access to this information would be beneficial to other jurisdictions that do not currently have this capability in identifying potential conflicts.

If a jurisdiction believes this is not an option, then a schedule could be created that would ensure a regularly scheduled calendar to resolve the conflicts. Alternatively, judicial officers could consult with one another using a process similar to that used in Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) cases.

Guideline Four: The Court on its own initiative, or through a motion of any party to the underlying no-contact or protection order, shall consider reconciling conflicting or duplicative orders.

In 2010, pursuant to legislation, the courts adopted policies that afforded the named victim in a criminal no-contact order the ability to request a modification or rescission of the no-contact order. A similar approach is suggested here.

Courts should have written instructions explaining the process for moving to reconcile duplicate or conflicting orders. Instructions should be available in multiple languages in accordance with local demographics.

Instructions for the motion to reconcile should include notice to the restricted party and to the protected party about factors that the court will consider when deciding whether to reconcile the orders. Those factors may include but are not limited to: how the requested reconciliation will impact the safety of the protected party and children, whether the protected party has had a chance to make additional plans for safety, the status and nature of the criminal proceeding(s) against the defendant, the defendant's compliance with court instructions and sentence, as well as information entered during family court proceedings.

A critical part of this process is notice to affected parties. For example, all parties to previous orders, including prosecutors and protected parties, must be given actual notice of the hearing. It is understood that in some cases it may be impossible for a party to contact a protected party and it may be difficult for prosecutors to locate protected parties.

Each court should provide forms for making a reconciliation request. The AOC will work with the Pattern Forms Committee to develop model forms which courts are encouraged to use. These forms will include:

- Motion for reconciliation of orders (completed by moving party victim or the court if it is the moving party);
- Notice of hearing (completed by moving party);
- Denial of hearing (completed by court);
- Findings and Order on hearing (completed by court); and
- New no-contact/protection order (completed by court).

Each court should determine the point of access for the petitioner's request. This could be the prosecutor's office, the defense, advocacy agency, the court, or a combination of these points of access. Courts are encouraged to consider offering multiple entry points to ensure the protected party has broad and easy access to this process and to minimize potential conflicts of interest.

Regardless of the process for access, all court staff, prosecutors, defense and family law attorneys, advocates, and clerk's offices should know the reconciliation process.

Courts should determine a scheduling mechanism to ensure that no-contact and protection order reconciliation hearings happen within a reasonable time following the request. This could be accomplished through a regularly scheduled calendar for reconciliation of orders.

When a hearing is scheduled, all parties should be notified of the date, time, and place of the hearing.

If any order is modified or rescinded as a result of the reconciliation process, a new order should be issued stating which prior order(s) it replaces and notification should be sent to law enforcement and all named parties.

Guideline Five: There is a biennial review of the institution of and effectiveness of the policies.

The Commission will work with the Center for Court Research to determine appropriate measures of effectiveness. These measures will be distributed to the courts by June 30, 2012.

Beginning July 1, 2012, and biennially thereafter, a survey will be developed and distributed to all courts asking who has instituted and is drafting guidelines for reducing conflicting and duplicative orders. Courts will forward their guidelines to the Commission no later than December 31, of the survey year.

SYSTEM RECOMMENDATIONS

Each jurisdiction will establish a process for law enforcement officers to have 24-hour access to information about the specific provisions of all orders involving both parties and consultation about how to enforce order violations when there are multiple orders.

All entities agree to notify the courts when they discover a conflicting or duplicative order. These entities include but are not limited to:

- Law enforcement;
- Clerk's office;
- Prosecuting Attorney;
- Community Advocates;
- Defense Attorneys; and
- Family Law Attorneys.

The Commission recommends resuming use of Local Coordinating Councils through General Rule 29 (j). A collaborative problem solving model is a viable and responsible alternative. Recommendations for the Coordinating Councils include:

- A biennial review of the effectiveness of the agreed upon procedures for reducing and resolving conflicting and duplicative no-contact and protection orders;
- Coming to consensus on the term "most restrictive." Judicial officers and their criminal justice partners do not agree on how to determine what order and condition(s) should supersede one(s) in conflict; and
- Continuing to reduce overlap of responses and duplication of efforts, and the institution of a seamless response to domestic violence and sexual assault.

ONGOING CHALLENGES

Two significant problems remain:

1. Inability to see complete provisions of existing orders; and
2. Too many types of orders.

Inability for judicial officers to see the terms of existing orders.

The Judicial Information System includes basic information about orders, such as the names of parties, date of entry, and the name of the issuing court. However, it does not provide the ability to view the actual order and the conditions of each order. This lends to the issuance of conflicting and duplicative orders. The Commission has received a grant to develop a "proof of concept" model that is intended to be a possible solution to this problem.

Too many types of orders.

A workgroup is in the process of reviewing existing orders to determine which orders could be consolidated.