

## CHAPTER 8 CIVIL PROTECTION ORDERS

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*“The legislature finds that it is in the public interest to improve the lives of persons being victimized by the acts and dynamics of domestic violence, to require reasonable, coordinated measures to prevent domestic violence from occurring, and to respond effectively to secure the safety of survivors of domestic violence...”*

RCW 7.105.900(2)(a)

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### I. Purpose and Effectiveness of Protection Orders

Protection orders have emerged during the past three decades as an accessible and effective justice system response to domestic violence. Studies show that protection orders are associated with a significant decrease in risk of violence against women<sup>1</sup> by their male intimate partners.<sup>2</sup> Civil protection orders are particularly helpful when seen as part of a comprehensive approach aimed at protecting survivors of domestic violence.

The legislature has recognized that protection orders are a “valuable tool to increase safety for victims and to hold batterers accountable.” *Danny v. Laidlaw Transit Serv., Inc.*, 165 Wn.2d 200, 209, 193 P.3d 128 (2008), citing Laws of 1992, Ch. 111 §1. Judges have a unique opportunity to intervene in domestic violence cases. For those victims who petition earlier on in an abusive relationship, before violence begins to escalate to serious injury, judges can better structure needed protection.<sup>3</sup>

Protection orders can be effective whether the parties are together or separated. Many studies have documented that domestic violence either started, continued, or increased in severity after

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<sup>1</sup>The authors of this chapter acknowledge that domestic violence is not only perpetrated against women; however, we were not able to locate research specifically regarding the decrease of violence in these populations after seeking a protection order.

<sup>2</sup> T.K. Logan, Robert Walker, William Hoyt, Teri Faragher, “The Kentucky Civil Protective Order Study: A Rural and Urban Multiple Perspective Study of Protective Order Violation Consequences, Responses, & Costs,” *Final report to the National Institute of Justice*, (2009): NCJ 228350; Victoria L. Holt, Mary A. Kernic, Thomas Lumley, Marsha E. Wolf and Frederick P. Rivara, “Civil Protection Orders and Risk of Subsequent Police-Reported Violence,” *Journal of the American Medical Association* 288, no. 5 (August 7, 2002): 589-594.

<sup>3</sup> K.A. Vittes & S.B. Sorenson, “Restraining Orders Among Victims of Intimate Partner Homicide,” *Injury Prevention*, 14, (2008), 191-195.

separation.<sup>4</sup> Many batterers who kill their partners do so at the time the victim is in the process of separating from an abuser.<sup>5</sup>

This chapter is intended to assist the court in crafting effective orders and in developing effective and efficient best practices for handling domestic violence, consistent with the rights of all parties.

## II. Scope of this Chapter and Terminology

### A. Orders Available for the Protection of a Victim

Washington statutes provide for the issuance and enforcement of protection orders in a variety of contexts:

- **Civil protection orders** ([Chapter 7.105 RCW](#)): Domestic violence protection orders, sexual assault protection orders, stalking protection orders, anti-harassment orders, vulnerable adult protection orders, extreme risk protection orders
- **Restraining orders** ([RCW 26.09.060](#) and [26.09.300](#); [26.44.063](#), [26.26B.020](#))
- **Criminal no-contact orders** ([RCW 10.99](#), [RCW 9A.46.040](#) - [.055](#))
- Enforcement of **foreign protection orders** ([RCW 26.52](#))

Courts are also authorized to issue protection orders when addressing parentage actions ([RCW 26.26A](#)).

A petition for a civil protection order may be made regardless of “whether or not there is a pending lawsuit, complaint, petition, or other action between the parties, except in cases where the court has realigned the parties in accordance with RCW [7.105.210](#).” [RCW 7.105.105](#). The statute also may not dismiss a civil protection order case on the grounds that there is a criminal no-contact order, family law restraining order (restraining respondent’s contact with the petitioner), that there may be relief available in a different type of proceeding, or due to pending criminal charges against the respondent. [RCW](#)

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<sup>4</sup> J. Hardesty & L. Ganong, “Intimate Partner Violence, Parental Divorce, and Child Custody: Directions for intervention and future research. *Family Relations*, 55 (2006): 200-210; C. Krebs, M. Breiding, A. Brown, & T. Warner, The Association Between Different Types of Intimate Partner Violence Experienced by Women. *Journal of Family Violence*, 26 (2011), 487-500; B. Hayes, Abusive Men’s Indirect Control of their Partner During the Process of Separation. *Journal of Family Violence*, 27, (2012)333-344

<sup>5</sup> The Washington State Domestic Violence Fatality Review found that 29% of the 463 abusers who committed homicides between January 1997 and June 2010 committed homicide-suicide. An additional 53 abusers killed themselves after attempting homicide. 46% of the homicides took place after the domestic violence victim had left, divorced or separated from the abuser, or was attempting to separate from the abuser. Jake Fawcett, “Up to Us- Lessons Learned and Goals for Change After Thirteen Years of the Washington State Domestic Violence Fatality Review,” *Washington State Domestic Violence Fatality Review 2010* (Washington State Coalition against Domestic Violence, 2010), available at: <http://dvfatalityreview.org/>.

[7.105.225\(2\)\(c\), \(d\)](#). Similarly, pursuant to [RCW 10.99.040\(1\)\(g\)](#), within the context of a criminal case, the court “shall not deny the issuance of a no-contact order based on the existence of an applicable civil protection order preventing the defendant from contacting the victim.

## **B. Scope of this Chapter and Cross-References**

This chapter is primarily concerned with Orders of Protection issued pursuant to [Chapter 7.105 RCW](#). Issues concerning the enforcement of foreign protection orders pursuant to [Chapter 26.52 RCW](#) will also be discussed.

Although the policy concerns addressed in this chapter apply whenever a court is issuing an order for the protection of a domestic violence victim and often apply when a court is concerned with issues of child abuse or vulnerable adult abuse, the procedural discussions in this chapter apply to orders sought, issued, or enforced pursuant to [Chapter 7.105 RCW](#).

Attachment 3 to this chapter contains a brief overview of the many types of orders available to victims of domestic violence, including a chart summarizing the significant attributes of the various types of orders.

Criminal no-contact orders are discussed in detail in Chapter 4, Section III.

## **C. Clarifying Terminology Used: Ex Parte & Full Orders**

[RCW 7.105.305](#) provides for the issuance of “ex parte temporary protection orders” other than for extreme risk protection orders (ERPOs).<sup>6</sup> 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.”

Duration and relief for final 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. These orders are occasionally referred to as “permanent orders.” This is a misnomer. In reality, they are orders issued upon notice to all parties. Their duration may vary, depending upon the facts in each case. There is a presumption that no order will be issued for less than one year in duration except where there are children involved, there is a presumption that the order will not issue beyond one year, subject to renewal. Orders issued following notice and hearing will be referred to in this manual as “full orders.”

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<sup>6</sup> Ex parte ERPOs are authorized pursuant to [RCW 7.105.330](#).

### III. 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 forms, instructions, etc. 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 protection order cases, including statewide data collection. 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 have attorneys use the mandatory forms with the court ensuring that all proper boxes have been checked and written findings made. 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:

“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\(1\)\(a\)\(i\)](#).

**PRACTICE NOTE:** 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).

### IV. Filing Deadlines – Statute of Limitations

Washington law places no limitation on the time within which an abused party must file for a protection order. Recent acts of domestic violence are not required in order to obtain a domestic violence protection order. [RCW 7.105.225\(2\)\(e\)](#). The court should consider the totality of the evidence and circumstance of the parties, past and present.

In *Spence v. Kaminski*, 103 Wn. App. 325, 333-334, 12 P.3d 1030 (2000), the Court of Appeals upheld the issuance of a protection order where the petitioner did not allege a recent overt act of domestic violence. The petitioner, who had been victimized by the respondent for a period of years, was granted the order based on her current fears, even though most of the overt acts of domestic violence occurred five years before the filing of the petition.

## V. Key Definitions

### A. “Domestic Violence” ([RCW 7.105.010\(9\)](#)):

- physical harm, bodily injury, assault, or the infliction of fear of physical harm, bodily injury, or assault; nonconsensual sexual conduct or nonconsensual sexual penetration; coercive control; unlawful harassment; or stalking of one intimate partner by another intimate partner; or
- physical harm, bodily injury, assault, or the infliction of fear of physical harm, bodily injury, or assault; nonconsensual sexual conduct or nonconsensual sexual penetration; coercive control; unlawful harassment; or stalking of one family or household member by another family or household member.

### B. “Nonconsensual” ([RCW 7.105.010\(26\)](#)): lack of freely given consent.

### C. “Sexual conduct” ([RCW 7.105.010\(32\)](#)):

- any intentional or knowing touching or fondling of the genitals, anus, or breasts, directly or indirectly, including through clothing;
- any intentional or knowing display of the genitals, anus, or breasts for the purposes of arousal or sexual gratification of the respondent;
- 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;
- any forced display of the petitioner's genitals, anus, or breasts for the purposes of arousal or sexual gratification of the respondent or others;
- any intentional or knowing touching of the clothed or unclothed body of a child under the age of 16, if done for the purpose of sexual gratification or arousal of the respondent or others; or
- 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.

### D. “Sexual penetration” ([RCW 7.105.010\(33\)](#)): any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person including, but not limited to, cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.

E. **“Coercive control” (RCW 7.105.010(4))**: a pattern of behavior that is used to cause another to suffer physical, emotional, or psychological harm, and in purpose or effect unreasonably interferes with a person's free will and personal liberty. In determining whether the interference is unreasonable, the court shall consider the context and impact of the pattern of behavior from the perspective of a similarly situated person. Examples of coercive control include, but are not limited to, engaging in any of the following:

- damaging, destroying, or threatening to damage or destroy, or forcing the other party to relinquish, goods, property, or items of special value;
- using technology to threaten, humiliate, harass, stalk, intimidate, exert undue influence over, or abuse the other party, including by engaging in cyberstalking, monitoring, surveillance, impersonation, manipulation of electronic media, or distribution of or threats to distribute actual or fabricated intimate images;
- carrying, exhibiting, displaying, drawing, or threatening to use, any firearm or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate the other party or that warrants alarm by the other party for their safety or the safety of other persons;
- driving recklessly with the other party or minor children in the vehicle;
- communicating, directly or indirectly, the intent to harm the other party's children family members, friends, or pets, including by use of physical forms of violence; harm the other party's career; attempt suicide or other acts of self-harm; or contact local or federal agencies based on actual or suspected immigration status;
- exerting control over the other party's identity documents;
- making, or threatening to make, private information public, including the other party's sexual orientation or gender identity, medical or behavioral health information, or other confidential information that jeopardizes safety;
- engaging in sexual or reproductive coercion;
- causing dependence, confinement, or isolation of the other party from friends, relatives, or other sources of support, including schooling and employment, or subjecting the other party to physical confinement or restraint;
- depriving the other party of basic necessities or committing other forms of financial exploitation;
- controlling, exerting undue influence over, interfering with, regulating, or monitoring the other party's movements, communications, daily behavior, finances, economic

- resources, or employment, including but not limited to interference with or attempting to limit access to services for children of the other party, such as health care, medication, child care, or school-based extracurricular activities;
- engaging in vexatious litigation or abusive litigation as defined in RCW [26.51.020](#) against the other party to harass, coerce, or control the other party, to diminish or exhaust the other party's financial resources, or to compromise the other party's employment or housing; or
  - engaging in psychological aggression, including inflicting fear, humiliating, degrading, or punishing the other party.

“Coercive control” does not include protective actions taken by a party in good faith for the legitimate and lawful purpose of protecting themselves or children from the risk of harm posed by the other party.

**F. “Unlawful harassment” ([RCW 7.105.010\(36\)](#)):**

- a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, harasses, or is detrimental to such person, and that serves no legitimate or lawful purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner; or
- a single act of violence or threat of violence directed at a specific person that seriously alarms, annoys, harasses, or is detrimental to such person, and that serves no legitimate or lawful purpose, which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner. A single threat of violence must include: (i) A malicious and intentional threat as described in RCW [9A.36.080\(1\)\(c\)](#); or (ii) the presence of a firearm or other weapon.

**G. “Stalking” ([RCW 7.105.010\(34\)](#)):**

- any act of stalking as defined under RCW [9A.46.110](#);
- any act of cyber harassment as defined under RCW [9A.90.120](#); or
- any course of conduct involving repeated or continuing contacts, attempts to contact, monitoring, tracking, surveillance, keeping under observation, disrupting activities in a harassing manner, or following of another person that: (i) would cause a reasonable person to feel intimidated, frightened, under duress, significantly disrupted, or threatened and that actually causes such a feeling; (ii) serves no lawful purpose; and (iii) the respondent knows, or reasonably should know, threatens, frightens, or intimidates the person, even if the respondent did not intend to intimidate, frighten, or threaten the person.



**PRACTICE NOTE:** A final domestic violence protection order can be issued without a showing of a recent act of domestic violence, so long as the petitioner proves by a preponderance of the evidence that the petitioner has been subjected to domestic violence by the respondent. In contrast, an ex parte order cannot be issued unless the petitioner alleges that “serious immediate harm” or “irreparable injury” could result if the order is not issued immediately, which generally will require a recent act or threat. *Compare*, [RCW 7.105.225](#) and [RCW 7.105.305](#).

## **VI. Who May Seek a Domestic Violence Protection Order**

### **A. Relationships Between the Parties**

#### **1. “Intimate Partners” May Apply for a Domestic Violence Protection Order**

The statute defines “intimate partners” as spouses or domestic partners; former spouses or former domestic partners; persons who have a child in common regardless of whether they have been married or have lived together at any time, unless the child is conceived through sexual assault; or persons who have or have had a dating relationship where both persons are at least 13 years of age or older. [RCW 7.105.010\(20\)](#).

#### **2. “Dating relationship” in the context of the statute means:**

[A] social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) the length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties. [RCW 7.105.010\(8\)](#).

#### **3. Same-sex relationships**

The protections provided by chapter 7.105 RCW apply equally to those in a same-sex relationship. Nothing in the definition of “family or household member” limits chapter 7.105 RCW to those only in a heterosexual relationship.

For additional information on same-gender domestic violence, see [Appendix D](#).

#### **4. “Family or Household Members” May Apply for a Domestic Violence Protection Order**

The statute defines “family or household members” as persons related by blood, marriage, domestic partnership, or adoption; persons who currently or formerly resided together; persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren, or a parent’s intimate partner and children; and a person who is acting or has acted as a legal guardian. [RCW 7.105.010\(13\)](#).



## **B. Petitions for and by Minors**

The petitioner may petition for a domestic violence protection order on their own behalf and on behalf of family or household members who are minors or vulnerable adults. [RCW 7.105.100\(1\)\(a\)](#).

With the exception of vulnerable adult protection orders, a person over 15 years of age may seek relief under Chapter 7.105 RCW as a petitioner and is not required to seek relief through a petition filed on his or her behalf. They may also petition on behalf of a family or household member who is a minor if chosen by the minor and capable of pursuing the minor's stated interest in the action. [RCW 7.105.100\(2\)](#).

The court in its discretion may appoint a guardian ad litem for a petitioner or respondent who is under 18 years of age and not represented by counsel. [RCW 7.105.105\(11\)](#).

## **C. Protection Order on Behalf of a “Vulnerable Adult”**

The Department of Social and Health Services (DSHS) may also file a protection order on behalf of a “vulnerable adult” if they have the consent of the person to be protected. [RCW 7.105.110](#).

# **VII. Jurisdiction and Venue**

## **A. Level of Court that Can Issue the Protection Order**

Washington district and superior courts have jurisdiction to issue ex parte orders in all protection order proceedings except vulnerable adult protection order proceedings. [RCW 7.105.050\(2\)](#), [RCW 7.105.065](#).

Washington district and superior courts have concurrent jurisdiction in most situations. However, pursuant to [RCW 7.105.050\(1\)](#), civil protection order proceedings must be transferred from district court to superior court when:

- A superior court has exercised or is exercising jurisdiction over a proceeding involving the parties;
- The action would have the effect of interfering with a respondent's care, control, or custody of the respondent's minor child;
- 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;
- The petitioner, victim, or respondent to the petition is under 18 years of age; or
- 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](#).

Additionally, Extreme Risk Protection Orders (ERPOs) must be transferred to superior court. Juvenile court may hear an ERPO proceeding if the respondent is under 18 years of age. [RCW 7.105.070](#).

#### **B. Authority of superior court commissioners to issue final protection orders**

A court commissioner appointed pursuant to WA Const. Art IV Sec. 23 has the authority to enter final protection orders, even though such authority is not specifically granted by [RCW 2.24.040](#). *State v. Karas*, 108 Wn. App. 692, 32 P.3d 1016 (2001). See also [RCW 7.105.580](#).

#### **C. Venue**

Venue lies in the county where the petitioner resides. The petitioner may also file in:

- The county where an act giving rise to the petition for a protection order occurred;
- The county where a child to be protected by the order primarily resides;
- The county where the petitioner resided prior to relocating if relocation was due to the respondent's conduct; or
- The court nearest to the petitioner's residence or former residence under subsection (3) of this section. [RCW 7.105.075](#).

#### **D. Interaction with Jurisdictional and Venue Provisions Concerning Children (Parenting Plans)**

Even if a particular county or state has jurisdiction to enter a protection order, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) ([RCW 26.27](#)) or venue provisions may require that parenting plan issues be litigated in another forum. “Child custody proceedings” under the UCCJEA include protection order proceedings. [RCW 26.27.021\(4\)](#). In such cases, the court may exercise emergency jurisdiction until the appropriate forum determines whether it will exercise jurisdiction, if it determines that the victim and/or children will be inadequately protected as a result.<sup>7</sup> See [RCW 26.27.231](#).

In addition, emergency residential provisions relating to children should be provided on the same basis as is provided in RCW 26.09. The court may not delay or defer relief on the grounds that the parties could seek a parenting plan or modification to a parenting plan in a different action, or deny a protection order on the grounds that 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, subject to further orders in the family law

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<sup>7</sup> See Deborah M. Goelman, *Shelter from the Storm: using Jurisdictional Statutes to Protect Victims of Domestic Violence After the Violence of Women Act of 2000*, 13 COLUM. J. GENDER & L. 101(2004).

proceedings. [RCW 7.105.310\(1\)\(f\)](#). *See also*, [RCW 7.105.085](#) (UCCJEA) and [RCW 7.105.105\(14\)](#) (ICWA).

Regardless of a court's jurisdiction to adjudicate longer-term parenting plan issues, an adult is still entitled to seek a protection order concerning their own person if they otherwise satisfy the requirements.

#### **E. Personal Jurisdiction**

Personal jurisdiction over the domestic violence perpetrator is based on the fact that an act was committed which caused a tortious injury in the state. [RCW 4.28.185\(1\)\(b\)](#). Jurisdiction is in any state where any part of the act occurred, whether or not any of the parties actually reside in the state where the act was committed. Washington law provides for obtaining jurisdiction over a non-resident under [RCW 7.105.080](#) if:

- The individual is personally served with a petition within this state;
- The individual submits to Washington's jurisdiction by consent, entering a general appearance, or filing a responsive document having the effect of waiving any objection to consent to personal jurisdiction;
- The act or acts of domestic violence occurred within this state;
- The act or acts of the individual or the individual's agent giving rise to the petition or enforcement of a protection order occurred outside of Washington State and are part of an ongoing pattern that has an adverse effect on the petitioner or a member of the petitioner's family or household and the petitioner resides in Washington;
- The act or acts of domestic violence occurred outside this state and are part of an ongoing pattern of domestic violence or stalking that has an adverse effect on the petitioner or a member of the petitioner's family or household and the petitioner resides in Washington; or
- As a result of the acts giving rise to the petition or enforcement of a protection order, the petitioner or a member of the petitioner's family or household has sought safety or protection in, and currently resides in Washington; or
- There is any other basis consistent with [RCW 4.28.185](#) or with the Constitutions of this state and the United States.

Where the acts of domestic violence took place outside of Washington State, or the petitioner is in Washington to seek safety or protection, the perpetrator must have communicated with the petitioner or a member of the petitioner's family, directly or indirectly, or made known a threat to the safety of the petitioner or member of the petitioner's family while the petitioner or family member resides in Washington. [RCW 7.105.080\(2\)](#).

“Communicated” or “made known” includes, but is not limited to the following means: in person, through publication, by mail, telephonically, through an electronic communication site or medium, by text, or through other social media. Communication on any electronic medium that is generally available to any individual residing in the state shall be sufficient to exercise jurisdiction. [RCW 7.105.080\(3\)](#).

Furthermore, jurisdiction over the perpetrator may be obtained if the perpetrator has minimum contacts with the state. Reported case law is sparse on this issue but includes the following cases:

- *A.R. v. M.R.*, 799 A.2d 27 (N.J. App. 2002) (finding that the trial court had personal jurisdiction over the respondent who resided in Mississippi, and could issue an ex-parte protection order against him because he had made a series of calls to New Jersey to locate the victim); *M.P. v. M.S.*, 715 N.Y.S.2d 831 (2000) (New York may have jurisdiction over non-resident even though threats occurred outside of New York, if nonresident travels to New York from time to time to conduct business and New York resident is fearful of his conduct); *Hughs on Behalf of Praul v. Cole*, 572 N.W.2d 747 (Minn. 1997) (Minnesota has jurisdiction over non-resident father even where threats to non-resident father’s child occur outside of state, where child lives in Minnesota, father has telephone contact with child, and child suffers resulting emotional distress).
- A person who resides within the state, even if on a federal enclave, is still subject to the jurisdiction of a Washington court. *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 the ceded area, absent any indication that order interfered with federal function); *Anthony T. v. Anthony J.*, 510 N.Y.S.2d 810 (1986) (no personal jurisdiction over defendant when service cannot be accomplished out of state using the state’s long-arm statute).
- Foreign protection orders are valid and entitled to recognition if the issuing court had jurisdiction over the parties and matter under the law of the state, territory, possession, tribe, or United States military tribunal. There is a presumption in favor of validity, where an order appears authentic on its face. [RCW 26.52.020](#).

## **VIII. Fees – Filing, Service, Copies**

No fees for filing may be charged to a petitioner seeking a Sexual Assault Protection Order, Domestic Violence Protection Order, Stalking Protection Order, Vulnerable Adult Protection order, or Extreme Risk Protection Order. [RCW 7.105.105\(9\)\(a\)](#).

Filing fees for Antiharassment Protection Orders may be assessed unless:

- the petitioner is seeking a protection order against a person who as engaged in stalking, a hate crime, a single act of violence or threat of violence under [RCW 7.105.010\(35\)\(b\)](#), sexual assault or domestic violence; or
- the court determines the petitioner is unable to pay and waives the filing fee. [RCW 7.105.105\(9\)\(b\)](#).

No service fees may be charged by the court or any public agency to petitioners seeking a civil protection order under Chapter 7.105 RCW. [RCW 7.105.105\(9\)\(a\)](#). Service fees can be collected from respondents. [RCW 7.105.310\(1\)\(j\)](#).

Petitioners do bear the cost of service by mail or publication.

Petitioners shall be provided with the necessary number of certified copies, forms, and instructional brochures, including a copy of the service packet that consists of all documents being served on the respondent, at no cost. A respondent who is served electronically with a protection order shall be provided a certified copy of the order free of charge upon request. [RCW 7.105.105\(9\)\(a\)](#).

## **IX. Service of Process and Service of Protection Orders**

### **A. Service of Process**

#### **1. Ex Parte Orders**

By their nature, a hearing on a petition for an ex parte order does not require the respondent to have been served with notice of the hearing. [RCW 7.105.305\(1\)](#).

#### **2. Personal Service**

Personal service must be made by law enforcement in the following cases:

- cases requiring the surrender of firearms, dangerous weapons, and concealed pistol license;
- cases that involve transferring custody of a child/children from the respondent to the petitioner;
- cases involving vacating the respondent from the parties' shared residence; and
- cases involving a respondent who is incarcerated. [RCW 7.105.150\(1\)\(a\)\(i\)\(A\)-\(D\)](#) and [RCW 9.41.800\(7\)](#).

Personal service is also required for Vulnerable Adult Protection Orders when the petition is filed by someone other than the vulnerable adult. [RCW 7.105.\(1\)\(a\)\(i\)\(E\)](#).

Subsequent motions and orders may be served electronically once “...firearms and concealed pistol licenses have been surrendered and verified by the court, or there is evidence the respondent does not possess firearms, the restrained party has been vacated from the shared residence, or the custody of the child or children has been transferred, per court order, or the respondent is no longer incarcerated...” [RCW 7.105.150\(1\)\(b\)\(i\)](#).

In the above cases where personal service is required, after two unsuccessful attempts at personal service, service shall be permitted by electronic means once authorized by the court. [RCW 7.105.150\(1\)\(a\)\(iii\)](#).

“... if personal service by a law enforcement officer is not possible, and the respondent did not appear in person or remotely at the hearing, the respondent shall surrender the firearms in a safe manner to the control of the local law enforcement agency within 24 hours of being served with the order by alternate service.” [RCW 9.41.801\(2\)](#).

Personal service must be made upon the respondent not less than five court days prior to the hearing, unless waived by the nonmoving party. Service is completed on the day the respondent is personally served. [RCW 7.105.165](#).

### 3. Service by Electronic Means

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. [RCW 7.105.150\(1\)\(b\)\(i\)](#).

Court authorization permitting electronic service is not required except in cases specified above in [RCW 7.105.150\(1\)\(a\)\(i\)\(A\)-\(D\)](#). “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. No formal motion is necessary.” [RCW 7.105.150\(1\)\(b\)\(ii\)](#).

The 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. 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. [RCW 7.105.150\(1\)\(b\)\(iii\)](#).

Electronic service must be effected by transmitting copies of the petition and 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. Verification of 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. Sworn proof of service must be filed with the court by the person who effected service. [RCW 7.105.150\(1\)\(b\)\(iv\)](#).

Service is completed on the date of transmission. [RCW 7.105.165\(2\)](#).

**PRACTICE NOTE:** Where the parties participate in a hearing remotely, the court should email copies of the orders to the parties instead of requiring law enforcement to serve them.

4. Service by Mail [RCW 7.105.150\(1\)\(c\)](#)

Service by mail is permitted when:

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

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

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

**PRACTICE NOTE:** Refer Appendix L for additional information about Washington's Address Confidentiality Program.

5. Service by Publication [RCW 7.105.150\(1\)\(d\)](#)

**Service by publication is disfavored.** 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.

Publication must be made in a newspaper of general circulation in the county in which the petition was brought and in the county of the last known address of the respondent once a week for three consecutive weeks. The selected newspaper must be one of the three most widely circulated papers in the county. Service of the summons is considered complete when the publication has been made for three consecutive weeks.



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

## X. “No Wrong Door”

Pursuant to [RCW 7.105.100\(5\)](#), 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. 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 shall not be premised on alleviating any potential stigma on the respondent.

## XI. Relief Available

Protection orders, when properly drafted and enforced, are effective in eliminating or reducing domestic abuse.<sup>8</sup> In addition to indicating in the order that notice was provided to the restrained party, their utility may depend on whether they provide the requested relief in specific detail. Each type of relief provided must be fully explained in the order. Providing precise conditions of relief makes the offender aware of the specific behavior prohibited. A high degree of specificity also makes it easier for police officers and other judges to determine later whether the respondent has violated the order.<sup>9</sup>

[RCW 7.105.310](#) enumerates specific provisions for relief, which may be granted by the court in both ex parte and final protection orders other than extreme risk protection orders.

- A. **Restraint from future acts of violence, [RCW 7.105.210\(1\)\(a\)](#):** 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.

**PRACTICE NOTE:** Some abusers are discouraged from battering by protection orders that forbid violence and include explicit legal repercussions for failing to follow the order. Whether or not the order requires the abuser to vacate the joint

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<sup>8</sup> T.K. Logan, Robert Walker, William Hoyt, Teri Faragher, “The Kentucky Civil Protective Order Study: A Rural and Urban Multiple Perspective Study of Protective Order Violation Consequences, Responses, & Costs,” *Final report to the National Institute of Justice*, (2009): NCJ 228350.

<sup>9</sup> M. Sheeran & E.Meyer, *CIVIL PROTECTION ORDERS: A Guide for Improving Practice*, National Council of Juvenile and Family Court Judges, (2010).

premises, the order challenges the batterers' sense of entitlement to dominate their partner.<sup>10</sup>

- B. Restraint from contact, [RCW 7.105.310\(1\)\(b\)](#):** 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.

**PRACTICE NOTE:** A protection order need not prohibit all contact and the court has discretion to craft an order appropriate to the circumstances. *See State v DeJarlais*, 136 Wn.2d 939, 945, 969 P.2d 90 (1998). When considering whether to allow some contact, the court should consider which party is requesting contact, and to ensure that an order is enforceable, it is critical that any language about allowable contact is precise.

- C. Exclusion from Shared Residence, [RCW 7.105.310\(c\)](#).**
- D. Exclusion from Residence, Workplace, School, [RCW 7.105.310\(d\)](#):** 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 Prohibition, [RCW 7.105.310\(e\)](#):** 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 Provisions, [RCW 7.105.310\(f\)](#):** If the parties have children in common, there may be residential provisions with regard to their minor children; however, parenting plans as specified in chapter 26.09 RCW must not be required. 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 must not 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, subject to further orders in the family law proceedings.

Effect on existing parenting plan or child support order: Provision of a domestic violence protection order that prohibited father from having any contact with children

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<sup>10</sup> Jane K. Stoeber, *Freedom from Violence: Using the Stages of Change Model to Realize the Promise of Civil Protection Orders* 72 Ohio St. L.J., 303, 336 (2011) (discussing petitioners attempt to change the dynamic of the relationship by showing her ability to access the judicial system).

until further action in family court was not an impermissible *de facto* modification of the parenting plan. *In re Marriage of Stewart*, 135 Wn. App. 535, 137 P.3d 25 (2006).

- G. Treatment, [RCW 7.105.310\(g\)](#):** 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 Evaluation, [RCW 7.105.310\(h\)](#):** 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 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. 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 Transfer, [RCW 7.105.310\(i\)](#):** 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 Fees, [RCW 7.105.310\(j\)](#):** 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, [RCW 7.105.310\(k\)](#).**
- L. Electronic Monitoring of Respondent, [RCW 7.105.310\(l\)](#):** 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.

Electronic monitoring with victim notification is authorized by RCW [2.56.260](#), otherwise known as the Tiffany Hill Act. In *Davis v. Arledge*,<sup>11</sup> the Court of Appeals upheld the constitutionality of the [Tiffany Hill Act](#), and confirmed electronic monitoring as a form of protection for domestic violence and stalking survivors in civil protection order proceedings.

**M. Surrender or Prohibition from Accessing Firearms, Dangerous Weapons, and Concealed Pistol License, [RCW 7.105.310\(m\)](#):**

Domestic violence victims are at an increased risk when their abuser has access to firearms. “Firearms are used to commit more than half of all intimate partner homicides in the United States. When an abusive partner has access to a gun, a domestic violence victim is 11 times more likely to be killed.” [RCW 7.105.900\(3\)\(a\)](#). 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 providing for courts to assess compliance.

**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. See <https://www.courts.wa.gov/opinions/?fa=opinions.disp&filename=556821MAJ>. The impact of *Flannery* is unclear as of this publication date. As of this publication date, *United States v. Rahimi*<sup>12</sup> was also pending decision regarding whether firearms provisions in protection orders violate the Second Amendment.

In criminal cases, [RCW 9.41.800\(1\)](#)<sup>13</sup> mandates prohibition and surrender under certain circumstances:

(1) Any court when entering an order authorized under... chapter 7.105 RCW [*other statutes omitted*] ... 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:

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<sup>11</sup> 531 P.3d 792 (2023).

<sup>12</sup> See <https://www.law.cornell.edu/supct/cert/22-915>.

<sup>13</sup> RCW 9.41.800 <http://app.leg.wa.gov/rcw/default.aspx?cite=9.41.800>.

- (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;
- (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.

Similarly, in civil cases [RCW 9.41.800\(2\)](#) mandates prohibition and surrender under proscribed circumstances:

(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;<sup>14</sup>
- (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:

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<sup>14</sup> An agreed order without a hearing meets the requirements of this subsection. [RCW.9.41.800\(2\)\(a\)](#).

(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.

In addition, in its discretion 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 moving affidavit or other evidence, that irreparable injury could result if an order is not issued until the time for response has elapsed. [RCW 9.41.800\(3\)](#).

In addition to the provisions of subsections (1) and (3) of this section, the court may also enter an order requiring a party to comply with prohibition and surrender 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. [RCW 9.4.1.800\(4\)](#).

The requirements of subsections (1) and (4) of [RCW 9.41.800](#) may be for a period of time less than the duration of the order.

The court is without discretion and 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 only to the local law enforcement agency. [RCW 9.41.800\(6\)](#).

**PRACTICE NOTE**: In certain articulated factual situations, weapons “subject to the party’s immediate possession or control” might include weapons given to family members, friends, or someone other than law enforcement, and those weapons also may be ordered surrendered to law enforcement for the duration of the order. This is because third parties cannot verify whether an order has expired or run a background check to ensure that the restrained person is eligible to possess once the order expires.

Immediate service of 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 is set forth by RCW [9.41.800\(7\)](#):

(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.

Pursuant to [RCW 9.41.801\(2\)](#), law enforcement is also required to recover firearms, dangerous weapons, and any concealed pistol license at the time of service.

Pursuant to [RCW 7.105.362\(1\)](#), if the temporary order included an OTSW, and the protection order is denied at the full hearing, the OTSW must remain in effect until the period for a petitioner to file a motion for reconsideration or revision has passed. If a motion for reconsideration or revision is filed, the OTSW must remain into effect until that motion is resolved. However, under [RCW 7.105.362\(3\)](#), these provisions “*do not apply* if allowing the OTSW to remain in effect would be manifestly unjust, including but not limited to, situations where the court finds the temporary protection order was entirely without merit, the petitioner was engaged in abusive use of litigation, or the petitioner was exerting coercive control....”

**N. Possession and Use of Essential Personal Effects, [RCW 7.105.310\(n\)](#):** 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 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 Vehicle, [RCW 7.105.310\(o\)](#):**

**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, [RCW 7.105.310\(p\)](#):** The court may restrict the respondent from engaging in abusive litigation<sup>15</sup> 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 in the petition or by a separate, stand-alone motion.
- Q. Restrain from Committing Acts of Abandonment, Abuse, Neglect, or Financial Exploitation Against a Vulnerable Adult, [RCW 7.105.310\(q\)](#).**
- R. Require Accounting by Respondent of Disposition of the Vulnerable Adult’s Income/Other Resources, [RCW 7.105.310\(r\)](#).**
- S. Restrain Transfer of Respondent’s and/or Vulnerable Adult’s Property, [RCW 7.105.310\(s\)](#):** This restraint must be for a specified period, not to exceed 90 days.
- T. Order Financial Relief and Restrain the Transfer of Jointly Owned Assets, [RCW 7.105.310\(t\)](#).**

**PRACTICE NOTE:** 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 Images, [RCW 7.105.310\(u\)](#):** The court may restrain the respondent from possessing or distributing intimate images, including, but not limited to taking down and deleting all intimate images and recordings of the petitioner in the respondent’s possession or control; and to ceasing any and all disclosure of those intimate images.

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

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. [RCW 7.105.310\(u\)](#).

The definition of an intimate image defined in [RCW 9A.86.010\(6\)\(b\)](#) is incorporated into [RCW 7.105.310\(u\)](#). An intimate image 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

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<sup>15</sup> Abusive litigation is defined in [RCW 26.51.020\(1\)](#).

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 Necessary, [RCW 7.105.310\(v\)](#):**

A court, in issuing a protection order, has substantial discretion in crafting provisions that will fully protect the petitioner and their family and household members. For instance, the court may, in a given case, deem it appropriate to order the respondent to relinquish control of the petitioner’s pet or, where there is a specific concern that the respondent might destroy petitioner’s property, order the respondent to maintain petitioner’s property in good condition or to turn it over to the petitioner, even when such property is not an “essential personal effect.” Or, if a victim is in hiding, the court might issue an order prohibiting the respondent from making attempts to find her.

Thus, in *Dickson v. Dickson*, 12 Wn. App. 183, 529 P.2d 476 (1974), a case involving an injunction issued in a dissolution proceeding, but presenting issues common in the protection order context, the court upheld a provision prohibiting further harassment. Among other things, the ex-husband was enjoined from accusing the ex-wife of being insane, from cursing at her, from writing her letters, and from representing that the two were still married. The case held that the injunction did not violate the ex-husband’s first amendment rights. “[T]he First Amendment is not absolute . . . . The thrust of the injunction is the protection of [the] minor children . . . . There was sufficient evidence that [the ex-husband’s] conduct interfered with the welfare of his minor children.” *Dickson* at 188-89. The court did, however, order that the injunction terminate upon the youngest child reaching majority and required that the phrase “from representing [the ex-wife] as his wife” be modified to reflect that the ex-husband was entitled to contend that according to the tenets of his religion the two were still married. *Dickson* at 191.

Furthermore, the protections available “shall not be denied or delayed on the grounds that the relief is available in another action” and “[a] petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.” [RCW 7.105.105\(5\), \(6\)](#).

Although broad, the court’s discretion is not unlimited. For example, a judge cannot effectuate a *permanent* modification of a parenting plan or support obligation through use of a protection order. *In re the Marriage of Barone*, 100 Wn. App. 241, 247, 996 P.2d 654 (2000). Furthermore, protection orders provisions restraining speech should be tailored to specific factual findings relating to a respondent’s abusive or harassing behavior. *Marriage of Meredith*, 148 Wash. App. 887; 201 P.3d 1056 (2009).

## Checklist of Relief Available

RELIEF AVAILABLE	STATUTORY AUTHORITY
NO FURTHER ACTS OF VIOLENCE <ul style="list-style-type: none"> <li>• to petitioner</li> <li>• to children</li> <li>• to other household members</li> </ul>	<a href="#">RCW 7.105.310(1)(a)</a>
NO CONTACT <ul style="list-style-type: none"> <li>• with petitioner</li> <li>• petitioner’s family or household members, including children</li> </ul>	<a href="#">RCW 7.105.310(1)(b)</a>
EXCLUSION FROM SHARED RESIDENCE	<a href="#">RCW 7.105.310(1)(c)</a>
EXCLUSION FROM RESIDENCE, WORKPLACE, SCHOOL <ul style="list-style-type: none"> <li>• petitioner’s residence, workplace, school</li> <li>• daycare or school of a child</li> </ul>	<a href="#">RCW 7.105.310(1)(d)</a>
STAY AWAY PROVISIONS – 1,000 ft. (presumptive distance) <ul style="list-style-type: none"> <li>• from residence</li> <li>• from school, daycare, work place</li> <li>• from other specified location</li> </ul>	<a href="#">RCW 7.105.310(1)(e)</a>
RESIDENTIAL PROVISIONS (for parties with child(ren) in common)	<a href="#">RCW 7.105.310(1)(f)</a>
RESPONDENT TO OBTAIN TREATMENT (State-certified) <ul style="list-style-type: none"> <li>• Domestic Violence Perpetrator Treatment Program</li> <li>• Sex Offender Treatment Program</li> </ul>	<a href="#">RCW 7.105.310(1)(g)</a>
MENTAL HEALTH/CHEMICAL DEPENDENCY EVALUATION	<a href="#">RCW 7.105.310(1)(h)</a>
SCHOOL TRANSFER (parties under 18 y/o)	<a href="#">RCW 7.105.310(1)(i)</a>
COSTS AND FEES TO PETITIONER <ul style="list-style-type: none"> <li>• court costs</li> <li>• service fees</li> <li>• costs for bringing action, including reasonable attorney’s fees</li> </ul>	<a href="#">RCW 7.105.310(1)(j)</a>
ORDERS PROHIBITING SURVEILLANCE <ul style="list-style-type: none"> <li>• no harassing or following</li> <li>• no keeping under physical or electronic surveillance,</li> <li>• no cyberstalking</li> <li>• no monitoring—telephonic, audiovisual, or other electronic means of actions, location, or communication of a victim, victim’s children, or members of the victim’s household.</li> </ul>	<a href="#">RCW 7.105.310(1)(k)</a>
ELECTRONIC MONITORING OF RESPONDENT (18 y/o +)	<a href="#">RCW 7.105.310(1)(l)</a>
ORDERS TO SURRENDER & PROHIBIT WEAPONS <ul style="list-style-type: none"> <li>• firearms</li> <li>• other dangerous weapons</li> <li>• concealed pistol license</li> </ul>	<a href="#">RCW 7.105.310(1)(m)</a> <a href="#">RCW 9.41.800</a>
ORDER POSSESSION OF ESSENTIAL PERSONAL EFFECTS	<a href="#">RCW 7.105.310(1)(n)</a>
ORDER USE OF VEHICLE	<a href="#">RCW 26.50.060(1)(o)</a>
RESTRICT ABUSIVE LITIGATION	<a href="#">RCW 26.50.060(1)(p)</a>
RESTRAIN FROM COMMITTING ACTS OF ABANDONMENT, ABUSE, NEGLECT, FINANCIAL EXPLOITATION OF VULNERABLE ADULT	<a href="#">RCW 26.50.060(1)(q)</a>

<b>RELIEF AVAILABLE</b>	<b>STATUTORY AUTHORITY</b>
ACCOUNTING BY RESPONDENT OF DISPOSITION OF VULNERABLE ADULT'S INCOME/RESOURCES	<a href="#">RCW 26.50.060(1)(r)</a>
RESTRAIN TRANSFER OF RESPONDENT'S AND/OR VULNERABLE ADULT'S PROPERTY	<a href="#">RCW 26.50.060(1)(s)</a>
FINANCIAL RELIEF, RESTRAIN TRANSFER OF JOINTLY OWNED ASSETS	<a href="#">RCW 26.50.060(1)(t)</a>
RESTRAIN POSSESSION/DISTRIBUTION OF INTIMATE IMAGES	<a href="#">RCW 26.50.060(1)(u)</a>
OTHER RELIEF DEEMED NECESSARY	<a href="#">RCW 26.50.060(1)(v)</a>

## **XI. Relief Provisions Directed to Law Enforcement Officers**

Law enforcement can be ordered to:

- Serve notices of hearing and orders;
- Remove the restrained person's firearms, dangerous weapons and any concealed pistol license(s) (CPL);
- Assist with vacate orders. This can include accompanying the abused party to the residence, serving the respondent, ensuring that respondent takes clothing, obtaining all keys to the home from the respondent, giving them to the petitioner, and standing by while the respondent leaves;
- Assist with retrieval of property by accompanying the party retrieving belongings and standing by while the items listed in the order are retrieved. This may include use of a vehicle. The order needs to be specific, as police officers will generally not resolve disputes over items not listed in the order. No contact provisions should also be strictly enforced for the safety of the protected party and any protected family/household members, including minor children. Some law enforcement agencies will place a short time limit on how long they will stand by. If there is extensive property, it may be necessary to make other arrangements; and
- Assist in recovery of children, although a writ of habeas corpus is necessary if the respondent is uncooperative. Law enforcement may consider a refusal of court ordered child custody transfers as a potential protection order violation if the order itself prohibits the restrained party from having contact with the child(ren).

## **XII. Verbal Notification About Procedures**

If the petitioner is present at the full protection order hearing and the court denies the petition, the court must notify the petitioner verbally about the procedures and timelines for filing a motion for reconsideration or revision, and must also provide this information to the

petitioner in writing.<sup>16</sup> The information must also include contact information for civil legal aid organizations that may assist the petitioner with a motion for reconsideration or a motion for revision.<sup>17</sup>

Pattern forms for those motions are available at:

<https://www.courts.wa.gov/forms/?fa=forms.contribute&formID=142>.

A list of Washington legal resources for civil protection orders is available at:

[https://www.courts.wa.gov/content/publicUpload/GJCOM/1320\\_Legal\\_Resources.pdf](https://www.courts.wa.gov/content/publicUpload/GJCOM/1320_Legal_Resources.pdf).

### **XIII. Special Issues Regarding Ex Parte Orders**

#### **A. Authority to Issue Ex Parte Orders**

[RCW 7.105.305\(1\)](#) provides: “Where it appears from the petition and any additional evidence that 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, the court may grant an ex parte temporary protection order, pending a full hearing.”

#### **B. Considerations in Determining “Immediate Harm” and “Irreparable Injury”**

Considerations may include, but are not limited to, the following:

- History of violence;
- Petitioner’s injuries;
- Respondent’s access to weapons;
- Threats to attack or abduct the children;
- Threats or attacks on family or household members;
- Threats of suicide;<sup>18</sup>

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<sup>16</sup> RCW 7.105.362(2) <https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.362>

<sup>17</sup> Id.

<sup>18</sup> The Washington State Domestic Violence Fatality Review found that 29 percent of the domestic violence homicides involved suicide. *Supra* note 4.

- Stalking behavior;<sup>19</sup>
- Drug and alcohol abuse;
- History of mental disorder; and
- History of sexual deviancy/convictions for sexual crimes.

### C. Minor Children as Protected Parties

When requested, is a rebuttable presumption to include the petitioner’s minor children as protected parties in the ex parte temporary domestic violence protection order until the full hearing to reduce the risk of harm to children, unless there is good cause not to include the minor children. If the court denies the petitioner’s request to include minor children, the court shall make written findings about why the children should not be included, pending the full hearing. [RCW 7.105.100\(8\)](#).

### D. Timing of Hearing

“Courts shall prioritize hearings on petitions for ex parte temporary protection orders over less emergent proceedings.” [RCW 7.105.200\(2\)\(a\)](#). “If a petitioner has requested an ex parte temporary protection order, because these are often emergent situations, the court shall prioritize review, either entering an order without a hearing or scheduling and holding an ex parte hearing in person, by telephone, by video, or by other electronic means on the day the petition is filed if possible. Otherwise, it must be heard no later than the following judicial day.” [RCW 7.105.105\(12\)](#).

### E. Recording Abused Party’s Injuries

Where possible, the judge should record information regarding the petitioner’s visible injuries in written findings on the petition or temporary order. Recording this information becomes important for use in the subsequent hearing on the permanent civil protection order since by that time the evidence of these injuries may have healed.

**PRACTICE NOTE:** The absence of such information should not be interpreted as if there were not injuries.

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<sup>19</sup> T.K. Logan, Robert Walker, William Hoyt, Teri Faragher, “The Kentucky Civil Protective Order Study: A Rural and Urban Multiple Perspective Study of Protective Order Violation Consequences, Responses, & Costs,” *Final report to the National Institute of Justice*, (2009): NCJ 228350. (finding as part of the main conclusion of the study that “stalking plays a significant yet unrecognized role in ongoing violence and protection order violations, fear of future harm, and distress due to the abuse.”); Judith McFarlane, Jacquelyn Campbell, Carolyn Sachs, Yvonne Ulrich, & Xiao Xu, “Stalking and Intimate Partner Femicide,” *Homicide Studies* 3, No. 4, November 1999, 300-316.

## **XIV. Duration of Order**

### **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. These timeframes may be extended for good cause. [RCW 7.105.200\(3\)](#).

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. [RCW 7.105.200\(6\)](#).

### **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. Other than for antiharassment orders, the court shall not grant relief for less than one year unless the petitioner has so requested. [RCW 7.105.315](#).

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.<sup>20</sup> If the petitioner wishes 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](#).

### **C. When Written Findings Are Required**

Under both [RCW 7.105.305](#) (ex parte orders) and [RCW 7.105.225\(5\)](#) (full orders), the court is required to make written findings explaining why the order was not granted.

Additionally, when requested, there shall be a rebuttable presumption to include the petitioner's minor children as protected parties in the ex parte temporary domestic violence protection order unless there is good cause not to include the minor children. Written findings are required if a court does not include minor children. [RCW 7.105.100\(8\)](#).

Written findings are also required when the court declines a request to include one or more of the petitioner's family or household members in the final protection order. [RCW 7.105.225\(5\)](#).

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<sup>20</sup> This limitation does not apply to protection orders issued under chapters [26.09](#), [26.26A](#), or [26.26B RCW](#).



## XV. Evidentiary Issues

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

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. [RCW 7.105.200\(8\)](#). *See also Gourley v. Gourley*, 158 Wn.2d. 460, 145 P.3d 11835 (2006) (Recognizing that [ER 1101\(c\)\(4\)](#) permits the admission of hearsay in hearings for protection orders).

In *Gourley*, the court concluded that there was no due process violation in not requiring testimony or cross-examination at the hearing for protection order, but stated that such might be “appropriate in other cases.” *Cf.*, *Scheib v. Crosby*, 160 Wn. App. 345, 249 P. 3d 184 (2011) (trial court retains the inherent authority and discretion to decide the nature and extent of any discovery because domestic violence protection orders are “special proceedings”).

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. Live testimony of witnesses other than the parties shall not be permitted unless the court finds that such testimony is necessary and material. 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. [RCW 7.105.200\(5\)](#).

In E2SHB 1320, the Washington State Legislature directed the Gender and Justice Commission (GJC), with the support of the Washington State Women's Commission, to convene stakeholders to develop recommendations to the legislature and the courts regarding several protection order issues, including facilitating the receipt of evidence in civil protection order proceedings in ways that protect victim safety and privacy. Those recommendations and resources, along with others related to civil protection orders, are available at:

<https://www.courts.wa.gov/?fa=home.sub&org=gjc&page=Legislative&layout=2&parent=work>.

### B. Requirement to Consult the Judicial Information System (JIS)

Before ruling on a protection order, the court is required to consult JIS to determine the criminal history, history of victimization, history of respondent or petitioner in a protection order proceeding, or the pendency of other proceedings, including tribal and military proceedings, involving the parties. [RCW 7.105.230\(1\)](#).

**PRACTICE NOTE:** Unless tribal or military orders are also filed in state court, those orders will not currently be found in JIS.

Before granting an order under this chapter directing residential placement of a child or restraining or limiting a party's contact with his or her child, the court shall consult the judicial information system, if available, to determine the pendency of other proceedings involving the residential placement of any child of the parties for whom residential placement has been requested. [RCW 7.105.230\(2\)](#).

When the court proposes to consider information from the judicial information system or another criminal or civil database, the court shall: disclose the information to each party present at the hearing; on timely request, provide each party with an opportunity to be heard; and take appropriate measures to alleviate safety concerns of the parties. The court has discretion not to disclose information that the court does not propose to consider. RCW 7.105.230(3). *See also*, [ER 1101\(c\)\(4\)](#).

This does not need to be an elaborate process; nor does the court need to disclose information irrelevant to its decision-making process. A sample colloquy might proceed something as follows: “*Our court records indicate, Mr. Jones, that you have a conviction for 4<sup>th</sup> degree assault against Ms. Jones. What would you like to say about that?*” Should they dispute the information, the hearing can be continued until the file can be ordered or a certified copy of the record obtained.

## **XVI. Existence of Criminal Investigation or Charge**

An explanation about the parties’ Fifth Amendment rights should be incorporated into your introductory remarks for the protection order calendar. Please refer to this [Civil Protection Order Script](#) template. If the respondent requests a continuance due to the pendency of a criminal case:

1. There is a rebuttable presumption against delay ([RCW 7.105.200\(4\)](#) and [RCW 7.105.400\(4\)](#)) and
2. Courts are required to balance the eight *Olympic Pipeline*<sup>21</sup> 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 burdens on the party asserting the privilege;
  - f. convenience and efficiency of the court;

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<sup>21</sup> 104 Wn. App. 338, 16 P.3d 45 (2000).

- g. interests of non-parties to civil litigation; and
- h. public interest in civil and criminal litigation.

Please also refer to the following bench card: [Concurrent Civil Protection Order & Criminal Proceedings: Addressing Continuance Requests](#).

## **XVII. Conducting the Hearing**

### **A. Civil Protection Order Hearings are “Special Proceedings”**

Civil protection order proceedings supersede inconsistent civil court rules. 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. [RCW 7.105.200\(1\)](#).

### **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.

### **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.

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. 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. [RCW 7.105.200\(12\)](#).

For remote protection order hearings, livestreaming or recording proceedings online is prohibited unless a waiver has been received from all parties or the hearing is being conducted online and members of the public do not have in-person access to observe or listen to the hearing. [RCW 7.105.205\(4\)](#).

Further, courts should take appropriate measures in remote hearings to prevent members of the public or the parties from harassing or intimidating any party or witness to the case. Suggested measures include disallowing members of the public from communicating with the parties or with the court during the hearing; ensuring court controls over the microphone and viewing settings; and announcing limitations on allowing others to record the hearing. [RCW 7.105.205\(5\)\(d\)](#).

## **D. Scheduling Hearings**

### **1. Uncontested hearings for default or continuance**

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

Courts should be cautious about entering default orders dismissing a petition at the beginning of the calendar for the petitioner's failure to appear. Frequently, petitioners will be apprehensive about proceeding with a protection order, may be fearful of encountering the respondent at court, and may find the process confusing and intimidating, which can contribute to a petitioner appearing late. In the cases in which the petitioner arrives after the court has entered a dismissal order by default, and the respondent has not appeared at the hearing, the court may find it appropriate to simply vacate the dismissal order entered by default.

However, in those cases in which the respondent was present when the court entered a default and dismissal, then left before the petitioner later arrived, the court is faced with the choice of vacating the default and dismissal without notice to the respondent who appeared and was present when the default and dismissal were ordered or requiring the petitioner to file a new petition. To avoid such a problematic choice, the court should consider identifying those cases in which the respondent is present but the petitioner is not and, in those cases, directing the respondent to remain present for a period of time it deems appropriate, to determine if the petitioner will appear.

### **2. Contested hearings**

If sexual assault or domestic violence protection order hearings are set on a calendar that includes other types of protection order cases, full hearings on these cases at which both parties will be present should be scheduled at the end of the calendar, after people involved in other types of cases have left the courtroom in order to protect the privacy of the parties involved.

A recommended best practice is for scheduling protection order hearings is the following sequential order:

- Cases in which there is no proof of service; then

- Cases in which only one party is present and the case will be dismissed or a default order entered; then
- 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; then
- 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. [RCW 7.105.205\(1\)](#).

**PRACTICE NOTE:** Where possible, the 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. *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.* [RCW 7.105.205\(2\)](#).

Courts shall require assurances of identity of persons who appear by telephone, video, or other electronic means. Courts may not charge fees for remote appearances. [RCW 7.105.205\(3\)](#).

If any parties or witnesses to a hearing are appearing remotely, the following apply:

1. **Instructions:** 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. [RCW 7.105.205\(5\)\(a\)](#).
2. **Minimize wait times and inform parties:** 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. [RCW 7.105.205\(5\)\(b\)](#).
3. **Court Record:** 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. [RCW 7.105.205\(5\)\(c\)](#).

4. **Language Access:** Courts shall use technology that accommodates American sign language and other languages. [RCW 7.105.205\(5\)\(e\)](#).
5. **Safety & Privacy:** 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. [RCW 7.105.205\(5\)\(f\)](#).

**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:** Courts should provide the parties (in orders setting the hearing) a court telephone number and a court email address which the parties may use to inform the court if they are having technical difficulties and 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(s) 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. [RCW 7.105.205\(5\)\(g\)](#).
7. **Full & Meaningful Participation:** A party may request a continuance on the basis that they were unable to participate in the remote hearing due to presence of others who reside with them, 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. [RCW 7.105.205\(5\)\(h\)](#).

## **F. Advocates and Support Persons**

1. Sexual Assault and Domestic Violence Advocates - [RCW 7.105.250\(1\)](#)

Whether or not the petitioner has also retained an attorney, a sexual assault<sup>22</sup> or domestic violence advocate,<sup>23</sup> 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.

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. 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 - [RCW 7.105.250\(2\)](#)

Whether or not the petitioner has retained an attorney, a protection order advocate<sup>24</sup> 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.

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 his or her role as a protection order advocate and identifying the program for which they work or volunteer.

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](#).

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<sup>22</sup> 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.

<sup>23</sup> 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.

<sup>24</sup> 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.



### 3. Support Persons - [RCW 7.105.250\(3\)](#)

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.

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.

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.

### **G. Appointment of Counsel for the Petitioner – [RCW 7.105.240](#)**

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

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 here:

[https://www.courts.wa.gov/content/publicUpload/GJCOM/1320\\_Legal\\_Resources.pdf](https://www.courts.wa.gov/content/publicUpload/GJCOM/1320_Legal_Resources.pdf).

### **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. [RCW 7.105.245\(1\)](#)

The court shall not appoint an advocate for the party to provide interpretation services. [RCW 7.105.245\(1\)\(b\)](#)

Moreover, the same interpreter shall not serve parties on both sides of the proceeding when not on the record, nor shall the interpreter appointed by the court for the proceeding 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. [RCW 7.105.245\(5\)](#)

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. [RCW 7.105.245\(3\)](#)

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. [RCW 7.105.245\(7\)](#)

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. [RCW 7.105.245\(4\)](#)

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. [RCW 7.105.245\(6\)](#)

## **XVI. Conflicting Court Orders**

There may be other court orders issued in Washington State or from foreign jurisdictions, including those from tribal court, military court, or courts in other states.

To assist the courts in avoiding conflicting orders, the Judicial Information System includes a database containing relevant information and has been available to the courts since July 1, 1997. [RCW 7.105.230](#) further provides that courts shall consult with the Judicial Information System, prior to ruling on an order under [Chapter 7.105 RCW](#) and prior to granting an order directing residential placement of a child or restraining/limiting a party's contact with the child. A more detailed discussion of the scope of the Domestic Violence Database is contained in Chapter 9.

Nothing in Washington statutes prohibits a petitioner from seeking civil protection relief because the petitioner is protected under an order entered in a criminal proceeding under [Chapter 10.99 RCW](#).

When conflicting orders are issued involving the same parties, which court order controls will depend on a number of variables including which case is being heard first, what laws are applied to each specific case, and the statutory purpose of the competing orders in light of the domestic violence statutes.

In 2010, the legislature directed the Administrative Office of the Courts to develop guidelines for courts to establish a process to reconcile duplicate or conflicting protection and no-contact orders in the state. [RCW 2.56.240](#).<sup>25</sup> The guidelines are as follows:

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<sup>25</sup> The report to the legislature can be found at: [http://www.courts.wa.gov/programs\\_orgs/gjc/documents/dv%20protocolsdraftfinalFINAL.pdf](http://www.courts.wa.gov/programs_orgs/gjc/documents/dv%20protocolsdraftfinalFINAL.pdf)

- Information systems are checked to determine if there is an existing order before another one is issued.
- 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.
- There is a process to reconcile conflicting and duplicative orders.
- 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.
- There is a biennial review of the institution of and effectiveness of the policies.

In partial response to the 2010 directive to prevent the issuance of competing protection orders in different court and to give more information to judicial officers, in 2021 [RCW 7.105.230](#) and [7.105.555](#) were codified. [RCW 7.105.555](#) requires that the courts' statewide database contain information about protection and no contact orders of every type, as well as a complete criminal history of the parties. The statute also calls for implementation of a document viewing system to enable courts to view the actual protection orders.

As of December 2022, the date of editing of this section of the Domestic Violence Bench Guide, the Administrative Office of the Courts advised that Superior Court Judges with access to the statewide database will have access to a document viewing system for protection orders. The viewing system is not yet available to courts of limited jurisdiction.

## **XVII. Agreed Orders and Mediation**

*See also* discussion of mediation in Parenting Plans in Chapter 10, Section IV.

In general, resolving protection order cases through mediation is inappropriate. Mediation is a process by which the parties voluntarily reach consensus agreement about the dispute at hand. Power imbalances in cases involving domestic violence between the parties may render mediation inherently unfair. A conciliatory approach that does not hold a domestic violence perpetrator accountable for the violence may also send the message that there are no adverse consequences to the violence.<sup>26</sup>

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<sup>26</sup> N. Thoennes , P. Salem & J. Pearson. *Mediation and domestic violence: Current policies and practices*. Family and Conciliation Courts Review, 33, 6-29 (1995).

## **XVIII. Mutual Protection Orders Disallowed**

The court shall not issue a final 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. 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. [RCW 7.105.310\(4\)\(b\)](#).

This section of the statute is a reflection that mutual protection orders can create the following problems:<sup>27</sup>

- Due process problems when issued without prior notice, written application, or finding of good cause.
- Significant problems of enforcement which render them ineffective in preventing further abuse. Police may have no way of determining whose conduct is enjoined. This may result in both parties being arrested or in no arrests being made.
- Signaling to the batterer that such behavior is excusable, was perhaps provoked, and that the batterer will not be held accountable for the violence, making future violence more likely.
- Allowing a manipulative abuser to entrap a victim in contact that may lead to an arrest.

## **XIX. Realignment of Parties and Consolidation of Actions**

### **A. Realignment of Parties**

The court may realign the parties where the court finds the original petitioner is the abuser and the original respondent is the victim, and may issue a temporary order for protection until the victim is able to prepare a petition. [RCW 7.105.210](#).

### **B. Consolidation of Actions**

If a party files an action under chapter [13.32A](#), [26.09](#), [26.26A](#), or [26.26B](#) RCW, an order issued previously under [Chapter 7.105 RCW](#) may be consolidated under the new action. [RCW 7.105.550\(1\)\(b\)](#).

In some cases, it may be appropriate to consolidate or direct the court clerk to link all protection order and family law cases involving the same parties to reduce the likelihood of conflicting orders. In addition, in cases where the court finds it appropriate to issue a

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<sup>27</sup> See generally, J. Zorza, *What is Wrong with Mutual Orders of Protection?*, 1 Fam. And Intimate Partner Violence Q. 127, 2008.

protection order with a duration of more than one year, it may be helpful to consolidate the cases to reduce the burden on the parties in having to return to court in multiple proceedings.

In other instances, the Judicial Information System (JIS) may be adequate for ascertaining relevant information such as the existence of other protection or criminal no-contact orders, custody or parenting plan orders, and any criminal actions involving domestic violence.

The standard Petition for Protection Order form ([PO 001](#)) directs the petitioner to disclose any pending actions. [RCW 7.105.105\(4\)](#) requires the parties to disclose any other litigation or restraining, protection, or no-contact orders between the parties. [RCW 7.105.105\(5\)](#) also expressly provides that “[a] petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties ....”

## **XX. Renewal of Protection Orders**

There is no limit to the number of times a final protection order for a fixed period may be renewed. A petitioner may apply for renewal of the final protection order by filing a petition for renewal at any time within 90 days prior to the order’s expiration date. 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.

**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 consider *renewal 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](#). [RCW 7.105.405\(1\)](#).

The petitioner bears no burden of proving that he or she has a current reasonable fear of harm by the respondent. [RCW 7.105.405\(3\)](#).

### **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. [RCW 7.105.405\(2\)](#)

### **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<sup>28</sup> 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;
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. [RCW 7.105.405\(4\)](#).

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;

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<sup>28</sup> See Prussak v. Prussak No. 57233-8-II (2023) <https://www.courts.wa.gov/opinions/pdf/D2%2057233-8-II%20Published%20Order.pdf>.

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. [RCW 7.105.405\(5\)](#)

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. 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. [RCW 7.105.405\(12\)](#)

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. [RCW 7.105.405\(6\)](#)

The terms of the original protection order must not be changed on a motion for renewal unless the petitioner has requested the change. [RCW 7.105.405\(7\)](#).



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. [RCW 7.105.405\(8\)](#).

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. [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](#). [RCW 7.105.405\(10\)](#).

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. 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. 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. [RCW 7.105.405\(11\)](#).

## **XXI. Modification or Termination of Protection orders**

Either party may petition the court to modify or terminate the terms of an existing protection order before its expiration date. The court may modify or terminate the order upon notice and hearing. [RCW 7.105.500\(1\)](#).

A respondent is limited to filing no more than one motion to terminate or modify a protection 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. [RCW 7.105.500\(7\)](#).

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. 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 finds adequate cause. [RCW 7.105.500\(2\)](#).

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." The petitioner does not bear a burden to prove a current reasonable fear of harm by the respondent to prevent termination or modification. [RCW 7.105.500\(3\)](#).

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;
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. [RCW 7.105.500\(4\)](#).

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. [RCW 7.105.500\(5\)](#).

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. [RCW 7.105.500\(6\)](#).

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. 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 protection order. [RCW 7.105.500\(8\)](#).

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. [RCW 7.105.500\(9\)](#).

## XXII. Entry of Protection Order Data

### A. Clerk of the Court

The clerk of the court shall enter any final 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. [RCW 7.105.325\(1\)](#).

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. [RCW 7.105.325\(2\)](#). The clerk should also forward the Law Enforcement Confidential Information Form (LECIF) to law enforcement.

### B. Law Enforcement [RCW 7.105.325\(2\)-\(4\)](#)

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

**PRACTICE NOTE:** Full identifiers for respondents (first name, middle initial, last name, and date of birth) or at a minimum, their age range, are important to include for law enforcement to confirm identity for service or enforcement.

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. The order must remain 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. See discussion at Chapter 3 of this Bench Guide concerning firearms prohibition and surrender in protection order cases.

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

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.

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.

**PRACTICE NOTE:** Courts should still verify and attempt to send to appropriate law enforcement agency so that respondents are served efficiently.

### **XXIII. Civil Enforcement of Protection Orders: Civil Contempt**

The effectiveness of protection orders depends largely on how well they are enforced by both the judiciary and law enforcement. Even when a victim is able to accomplish obtaining a protection order, without enforcement the court order at best offers scant protection and at worst increases the victim’s danger by creating a false sense of security. Offenders may be emboldened to routinely violate orders if they believe there is no real risk of being arrested.<sup>29</sup>

This situation is not without remedy. Courts can develop, publicize, and monitor a clear, formal policy regarding violations in order to encourage respect for the court’s order and to increase compliance.

This section outlines considerations for the court when using civil contempt powers to enforce court orders. It is meant to assist the court in improving the utility of court orders in domestic violence cases by establishing effective monitoring and enforcement mechanisms.

#### **A. Knowing Violation of a Protection Order May Constitute Civil Contempt of Court, as well as Subjecting the Violator to Criminal Sanctions**

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](#).

#### **B. Available Sanctions**

The court may impose two different types of sanctions depending upon the nature of the contempt and the procedure followed by the court in adjudicating the contempt.

##### **1. Punitive sanctions**

Punitive sanctions are “imposed to punish a past contempt of court for the purpose of

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<sup>29</sup> T.K. Logan, Robert Walker, William Hoyt, Teri Faragher, “The Kentucky Civil Protective Order Study: A Rural and Urban Multiple Perspective Study of Protective Order Violation Consequences, Responses, & Costs,” *Final report to the National Institute of Justice*, (2009)

upholding the authority of the court.” [RCW 7.21.010\(2\)](#). These are only available either for a contempt occurring in the court’s presence (direct contempt) or where criminal contempt proceedings are initiated by the prosecutor with the attendant due process protections.

## 2. Remedial sanctions

Remedial sanctions are imposed to coerce “performance when the contempt consists of the omission or refusal to perform an act that is yet in the person’s power to perform.” [RCW 7.21.010\(3\)](#). These may be initiated by a party or on the court’s own motion. Remedial sanctions may also be imposed consistent with the required compliance review<sup>30</sup> of orders to surrender and prohibit weapons under [RCW 9.41.801\(6\), \(7\)](#).<sup>31</sup>

## C. Procedure for Imposing Sanctions

### 1. Direct contempt

Direct contempt may lead to summary imposition of either remedial or punitive sanctions. Direct contempt is conduct that occurs in the direct presence or view of the court. The court may summarily sanction contemptuous behavior which occurs within the courtroom where heard or seen by the judge. The alleged contemnor does not have a constitutional right to a full hearing on the matter. [RCW 7.21.050](#); *In re Willis*, 94 Wn. 180, 162 P. 38 (1917).

The court must impose the sanctions either immediately after the contempt occurs or at the end of the proceeding. The sanction may be only for the purpose of preserving order in the court and protecting the authority and dignity of the court.

The person committing the contempt must be given an opportunity to speak in mitigation unless compelling circumstances are present. *Templeton v. Hurtado*, 92 Wn. App. 847, 965 P.2d 1131 (1998).

The sanction imposed may be remedial or punitive:

- A remedial sanction forfeiture may not exceed \$500 for each day the contempt continues; and

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<sup>30</sup> Pursuant to [RCW 9.41.801\(6\)\(a\)](#), the court shall hold a compliance review hearing “[f]or any case where the court has indication that the respondent has in the respondent’s possession, custody, or control firearms, dangerous weapons, or a concealed pistol license.” Under [RCW 9.41.801\(6\)\(b\)](#), evidence that the court *should* consider when making findings of compliance include Department of Licensing and Washington State Patrol firearm records, police report and any document of firearms (for criminal cases), sections of the petition regarding weapons, attachments to the petition, law enforcement affidavits, and other relevant evidence (for civil protection order cases).

<sup>31</sup> [RCW 9.41.801\(7\)\(a\)](#) also allows the issuance of an arrest warrant if there is probable cause to believe that the respondent was aware of the order and failed to comply, failed to appear, or otherwise violated the order.

- A punitive sanction sentence may not exceed a fine of \$500 and imprisonment of 30 days, or both, for each act of contempt. [RCW 7.21.050](#).
- A party's threats of physical violence while in the courtroom could serve as a basis for a finding of direct contempt. However, the same threats, if made outside the courtroom or outside of the court's presence, would be indirect contempt. Where collateral testimony is necessary to establish the contemptuous conduct, direct contempt proceedings are not appropriate. In *Templeton v. Hurtado, supra*, the court imposed a sanction for direct contempt when a criminal defendant refused to sign a no-contact order. The contempt finding was reversed for procedural irregularities, without discussion of whether such refusal is punishable as direct contempt.
- A court is well-advised to use moderation in issuing punitive sanctions in a summary proceeding for direct contempt. Although [RCW 7.21](#) allows for summary imposition of punitive sanctions, long jail sentences without full criminal proceeding are likely to be looked upon with disfavor by appellate courts. *State v. Jordan*, 146 Wn. App 395, 190 P.3d 516 (2008). Written findings are required. *State v. Hobble*, 126 Wn.2d 283, 892 P.2d 85 (1995); *Templeton v. Hurtado, supra*.

## 2. Indirect contempt – remedial sanctions

Indirect contempt of a court order may occur where the violation occurs outside of the court's presence and/or where collateral testimony is necessary to prove the contempt. **This is the most common type of civil contempt.**

Proceedings to impose remedial sanctions are initiated by either the court or a person aggrieved by a contempt of court.

The person accused of contempt is entitled to notice and hearing. [RCW 7.21.030\(1\)](#).

A person found to have committed contempt may be sanctioned as follows:

- By imprisonment for so long as a coercive purpose is served, if the contempt is of one of the types defined in [RCW 7.21.010\(1\)\(b\)](#), [7.21.030\(2\)\(a\)](#);
- By a forfeiture not to exceed \$2,000 for each day the contempt continues ([RCW 7.21.030\(2\)\(b\)](#));
- By entry of an order designed to ensure compliance with a prior court order ([RCW 7.21.030\(2\)\(c\)](#));
- By an alternate remedial sanction if the court finds that the sanctions in [RCW 7.21.030\(2\)\(a\) through \(c\)](#) are ineffectual to terminate the contempt of court ([RCW 7.21.030\(2\)\(d\)](#)); and

- The court may order the person in contempt to pay losses suffered by the aggrieved party as a result of the contempt and costs incurred with the contempt action, including reasonable attorney fees ([RCW 7.21.030\(3\)](#)).

#### **D. Punitive sanctions**

Proceedings to impose punitive sanctions are initiated by filing an information or complaint by the prosecuting or municipal attorney, either on the attorney’s own initiative or at the request of a person aggrieved by the contempt. A fixed jail term cannot be imposed upon a contemnor for indirect contempt except in the context of a criminal proceeding, (i.e., prosecutor files charges, right to jury trial). Although there is some suggestion in the case law that a court may exercise its “inherent powers” where it deems the statutory remedies inadequate, case law has emphasized that due process protections cannot be obviated in doing so. *In re M.B.*, 101 Wn. App. 425, 3 P.3d 780 (2000); *In re Dependency of A.K.*, 130 Wn. App. 862, 125 P. 3d 220 (2005).

- a. A judge presiding in an action or proceeding to which the contempt relates may request the prosecuting or municipal attorney to commence punitive proceedings. Such judge is disqualified from presiding at the trial.
- b. An alleged contempt involving disrespect to or criticism of a judge disqualifies that judge from presiding at trial unless the person charged otherwise consents.
- c. A motion for imposition of remedial sanctions may be held jointly with a trial on information or complaint seeking punitive sanctions.
- d. A person found guilty of contempt may be punitively sanctioned as follows:
  - (i) By a fine of not more than \$5,000 for each separate contempt;
  - (ii) By imprisonment for not more than one year for each separate contempt;  
or
  - (iii) By both fine and imprisonment. [RCW 7.21.040](#).

#### **E. The Court Proactively Reviewing and Enforcing its Orders**

Where compliance with the court order can be measured by an outside source, such as attendance at batterers’ treatment classes, the information can be directly obtained by ordering the treatment provider to file regular reports with the court. The victim may not otherwise know whether the batterer is in compliance or may be afraid to complain about non-attendance. The court’s *sua sponte* use of its review and enforcement mechanisms sends a powerful signal that domestic violence is not merely a private matter but one of concern to the public at large. *See, e.g., State v DeJarlais*, 136 Wn.2d 939, 969 P.2d 90 (1998).



Given the legal difficulties in fashioning a remedy that is coercive rather than punitive in nature, however, civil review and enforcement remedies may be less powerful than the criminal processes for enforcement. A civil contemnor must be able to purge his contempt at all times and seek immediate release. Therefore, it may be difficult to order incarceration except for a very brief time. *See In Re Pers. Restraint of King*, 110 Wn. 2d 793, 756 P.2d 1303 (1988) (citing *State v Boatman*, 104 Wn.2d 44, 700 P.2d 1152 (1985)). If the alleged violation also constitutes a crime, for example, violation of the “no-contact” provisions of the order, it may be better to rely on criminal enforcement mechanisms.

In any contempt proceeding (except direct contempt occurring in the court’s presence) that may result in incarceration, the alleged contemnor has the right to appointment of counsel at county expense if they cannot afford to hire one. *Tetro v Tetro*, 86 Wn.2d 252, 544 P.2d 17 (1975). A pro se victim may feel threatened by a proceeding in which the abuser has counsel even if it is only for the limited purpose of determining contempt.

To set up a contempt review calendar, the court should consider additional staffing and calendaring needs. There will need to be staff responsible for notifying the parties of the hearings and writing up the orders. In addition, additional hearings will need to be created, so the court will need to determine whether they can be accommodated on the existing calendar, or whether additional calendars will need to be created.

Proactive review and enforcement also apply to Orders to Surrender and Prohibit Weapons. The state pattern form “Attachment E” is an attachment to protection order petitions involving firearms and other dangerous weapons to assist judicial officers in seeing what the respondent is alleged to possess.

## **XXIV. Criminal Enforcement of Protection Order Violations**

Issues concerning criminal enforcement are discussed more fully in Chapters III, IV, V, and VII.

A respondent may not be subjected to penalties for violation of a civil protection order unless the respondent has knowledge of the order. [RCW 7.105.465](#).

A knowing violation of a domestic violence protection order, sexual assault protection order, stalking protection order, vulnerable adult protection order, or an order granted under chapter [9A.40](#), [9A.44](#), [9A.46](#), [9A.88](#), [9.94A](#), [10.99](#), [26.09](#), [26.26A](#), or [26.26B](#) RCW, or a valid foreign protection order (defined in [26.52.020](#)) 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, the attorney shall initiate and prosecute a contempt proceeding if there is probable cause to believe that the violation occurred.

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. [RCW 7.105.470](#).

## **XXV. Full Faith and Credit—Violence Against Women Act (VAWA)**

In 1999, in compliance with the Violence Against Women Act (VAWA), the Legislature adopted [RCW 26.52](#), the **Foreign Protection Order Full Faith and Credit Act**. In enacting [RCW 26.52](#), the Legislature intended that “barriers faced by persons entitled to protection under a foreign protection order will be removed and that violations of foreign protection orders be criminally prosecuted in this state.” [RCW 26.52.005](#).

### **A. Definition of a Foreign Protection Order: [RCW 26.52.010\(3\)](#)**

An injunction or other order related to domestic or family violence, harassment, sexual abuse, or stalking, for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to another person issued by a court of another state, territory, or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, or any United States military tribunal, or a tribal court, in a civil or criminal action.

### **B. Formal Requirements of the Foreign Order: [RCW 26.52.020](#).**

A protection order is valid if the issuing court had jurisdiction over the parties and subject matter under its own laws.

A protection order is presumed to be valid where it “appears authentic on its face.”

### **C. Due Process Requirements: [RCW 26.52.020](#).**

In order to be the subject of a Washington criminal prosecution, a foreign protection order must comply with due process. That is, the person restrained must have had notice and an opportunity to be heard or, in the case of an ex parte order, notice and an opportunity to be heard must have been given “as soon as possible after the order was issued, consistent with due process.”

### **D. What Violations of a Foreign Order Can Be the Subject of a Washington Criminal Prosecution?**

A person who violates restraint, exclusion, and no-contact provisions of a foreign protection order is subject to criminal prosecution. In addition, “violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime” is punishable in Washington, even though violation of such provision contained in a Washington order would not be a crime. [RCW 26.52.070](#); *State v. Esquivel*, 132 Wn. App 316, 132 P.3d 751 (2006) (defendant subject to state prosecution for violation of tribal protection order even though tribal order did not contain written notice of penalties as required under former DV Protection Order Statute, RCW 26.50.031(1)).

**E. Child Custody Disputes: [RCW 26.52.080](#).**

By enacting [RCW 26.52](#), the Legislature did not intend to change how jurisdiction is determined as to placement, custody, or visitation of children. Resolution of disputes regarding provisions in foreign protection orders dealing with custody placement or visitation of children “shall be resolved judicially.”

Section 2266 of Title 18, U.S.C. provides that protection order includes provisions relating to child custody and visitation and must be afforded Full Faith and Credit to:

(5) PROTECTION ORDER.—The term ‘protection order’ includes—

(B) any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence, or stalking.

Courts will need to reconcile affording full faith and credit to foreign protection order provisions regarding child custody and visitation and determining what state has jurisdiction over placement of children pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), [RCW 26.27](#), and in accordance with the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. 1738A. See Chapter 10, VII, and Appendix G for further information.

**F. Filing of Foreign Protection Orders and Entry into Law Enforcement Information Systems**

[RCW 26.52.030](#) sets forth procedures for filing of a foreign protection order with the clerk of a Washington court. The order may be filed with the clerk of the court in the area in which the person seeking enforcement order resides or with the clerk of any Washington court “where the person entitled to protection believes enforcement may be necessary.” The order may be filed by the person seeking protection or may be sent directly by the foreign court or agency.

Foreign protection orders should be entered into the Judicial Information System (JIS) or alternative database “[t]o prevent the issuance of competing protection orders in different courts and to give courts needed information for the issuance of orders....” [RCW 7.105.555](#).

The clerk of the court in which the foreign protection order is filed is also required to forward information to the sheriff for entry into the law enforcement information system.

**PRACTICE NOTE:** A foreign protection order must be filed with a Washington court in order to be entered into the Judicial Information System.

## **G. Enforcement**

A foreign protection order is enforceable even if it has not been filed with a court of this state or entered into the law enforcement information system. [RCW 26.52.030\(2\)](#).

A knowing violation of a provision of a foreign protection order is punishable under RCW [7.105.450](#).

## **H. Mandatory arrest**

Pursuant to both [RCW 26.52.070\(2\)](#) and [RCW 10.31.100\(2\)\(b\)](#), a police officer with probable cause to believe a criminally enforceable provision of a foreign protection order has been violated must arrest such person.

## **XXVI. Electronic Access of Domestic Violence Protection Orders**

[GR 31](#) permits courts to make court records that are otherwise available to the public to be accessible remotely. As of April of 2014, several counties have made court records—or at least some subset of court records—available online. These include superior courts in Chelan, Kitsap, Pierce, and Thurston counties.

Courts considering making court records available remotely should consider the potential ramifications of § 106 of the Violence Against Women Act Court Training and Improvement Act of 2005, 109 P.L. 162; 119 Stat. 2960, codified 18 U.S.C. 2265(d)(3). This subsection of the Full Faith and Credit section is entitled “Limits on internet publication of registration” and provides:

A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration or filing of a protection order, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

The question of how [GR 31](#) interacts with § 106 is somewhat unsettled. A note discussing some of the issues courts should consider when deciding whether to authorize remote access of court records—particularly of protection and restraining orders—is included in Appendix C: Federal Domestic Violence Laws.