

CHAPTER 8 CIVIL PROTECTION ORDERS

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. They can play a critical role as part of a comprehensive plan designed to protect victims. Studies show that protection orders are associated with a significant decrease in risk of violence against women by their male intimate partners.¹ Protection orders are particularly helpful when seen as part of a comprehensive approach aimed at achieving the goals of civil court intervention.

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 early in an abusive relationship, before violence begins to escalate to serious injury, judges can structure needed protection.²

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 separation.³ Many batterers who kill their partners do so at the time the victim is in the process of separating from an abuser.⁴

It should be noted that Chapter 26.50 has been upheld against a challenge that the statutory procedures do not provide sufficient due process. As stated by the court in *State v. Karas*, 108 Wn.2d 692, 700, 32 P. 3d. 1016 (2001):

¹ 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.

² K.A. Vittes & S.B. Sorenson, “Restraining Orders Among Victims of Intimate Partner Homicide,” *Injury Prevention*, 14, (2008), 191-195

³ 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

⁴ 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://dvmfatalityreview.org/>

Considering the minor curtailment of [respondent's] liberty imposed by the protection order and the significant public and governmental interest in reducing the potential for irreparable injury, the Act's provision of notice and a hearing before a neutral magistrate satisfies the inherently flexible demands of procedural due process.

See also, Gourley v. Gourley, 158 Wn.2d 460, 145 P.3d 1185 (2006).

This chapter is intended to assist the court in crafting effective orders and in developing effective and efficient procedures 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:

1. Civil protection orders ([RCW 26.50](#))
2. Restraining orders ([RCW 26.09.060](#) and [26.09.300](#); [RCW 26.10.040](#), [26.44.063](#), [26.26.130](#))
3. Criminal no-contact orders ([RCW 10.99](#))
4. Anti-harassment orders ([RCW 10.14](#); [9A.46.050](#))
5. Sexual assault protection orders ([RCW 7.90](#))
6. Vulnerable adult protection orders ([RCW 74.34](#))
7. Enforcement of foreign protection orders ([RCW 26.52](#))

In recognition that domestic violence concerns can arise in a large number of other contexts, courts are also authorized to issue protection orders when addressing non-parental custody actions ([RCW 26.10](#)) and paternity actions ([RCW 26.26](#)). *See also* [RCW 26.50.025\(1\)](#), [26.09.050](#), [26.09.060](#), [26.10.040](#), and [26.10.115](#). A court may issue a protection order regardless of “whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.” [RCW 26.50.030\(2\)](#).

B. Scope of this Chapter and Cross-References

This chapter is primarily concerned with Orders of Protection issued pursuant to [RCW 26.50](#). Issues concerning the enforcement of foreign protection orders will also be discussed. [RCW 26.52](#).

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 only to orders initially obtained pursuant to [RCW 26.50](#).

Chapter 3, IV of this manual contains a brief review 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, III.

C. Terminology: Ex Parte and Final Orders

[RCW 26.50](#) provides for the issuance of two types of orders.

[RCW 26.50.070](#) provides for the issuance of an “ex parte temporary order of protection” upon a showing of “irreparable injury.” Because the distinguishing characteristics of these orders are 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.”

[RCW 26.50.060](#) provides for the issuance of an order “upon notice and after hearing.” These orders are occasionally referred to as “permanent orders.” This is a misnomer. If the order does not restrain the respondent from contacting his or her own child and if the court determines that the respondent is likely to resume acts of domestic violence when the order expires, the court may issue an indefinite order or a long-term order with a specified expiration date. In other situations, the order is issued for no more than one year. Orders issued following notice and hearing will be referred to in this manual as “final orders.”

III. Standard Forms

A. Statutory Authority

[RCW 26.50.035](#) directs the Administrator for the Courts to develop standard petition and orders of protection forms and instructional brochures to be available in all court clerk offices. *See* court forms at:

<http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=16>.

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

All courts should use the approved Washington State forms as those forms have been drafted to meet all state and federal requirements regarding domestic violence cases. The Order for Protection, WPF DV 3.015, is a mandatory form. Law enforcement officers, judicial and criminal information gathering agencies, and other courts are familiar with and rely upon those forms.

If the court uses orders prepared by an attorney, attach and incorporate by reference the mandatory court form to make sure that the order contains all necessary language, including, 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 person or persons who obtained the order invite or allow you to violate the order's prohibitions. The respondent has the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order upon written application. [RCW 26.50.035\(1\)\(c\)](#).

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).

1. Listing of Current Forms

Washington's protection order forms can be found at the courts' website at <http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=16>.

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 or renew a domestic violence protection order. The petitioner must only show present fear of harm based on past violence or threats of violence. *Spence v. Kaminski*, 103 Wn. App. 325, 334, 12 P.3d 1030 (2000); *Muma v. Muma*, 115 Wn. App. 1, 6-7, 60 P. 3d 592 (2002); *Barber v. Barber*, 136 Wn. App 512, 516, 150 P.3d 124 (2007).

In *Spence*, 103 Wn. App. at 333-334, 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. Grounds for Issuance of a Domestic Violence Protection Order

A. [RCW 26.50.010\(1\)](#) Defines “Domestic Violence” As:

1. Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; or
2. Sexual assault of one family or household member by another; or
3. Stalking . . . of one family or household member by another family or household member. “Stalking” is defined in [RCW 9A.46.110](#) and includes harassment and following the other person. The stalking statute also refers to the definition of harassment in [RCW 10.14.020](#).

NOTE: A final order of protection can be issued *without* a showing of a recent overt act of domestic violence, so long as the victim, based on prior acts of domestic violence, remains in fear of the respondent. In contrast, an ex parte order cannot be issued unless there is a danger of “irreparable injury” to the petitioner—which generally will require a recent act. *Compare*, [RCW 26.50.060](#) and [RCW 26.50.070](#).

B. Comparison of [RCW 26.50.010\(1\)](#) Definition with Definition of “Domestic Violence” Contained in [RCW 10.99.010](#)

[RCW 26.50](#) includes a behavior-based definition. That is, it defines certain behaviors as domestic violence when they occur between family or household members. In contrast, [RCW 10.99.020\(3\)](#) includes a non-exclusive list of crimes, which are “domestic violence” when “committed by one family or household member against another.” Significantly, [RCW 10.99.020\(3\)](#) includes prosecutions for acts of malicious mischief, criminal trespass, and burglary which, depending on the specific facts of the incident, might not permit issuance of a protection order under [RCW 26.50](#).

C. Grounds for Issuance of Protection Orders

Grounds	Applicable Statutes Granting Authority to Issue Orders
Physical harm, bodily injury	RCW 26.50.010(1)
Assault, including sexual assault	RCW 26.50.010(1)
Infliction of fear of imminent physical harm, bodily injury or assault	RCW 26.50.010(1)
Stalking	RCWs 9A.46.010 , 10.14.020 , and 26.50.010(1)

VI. Who May Seek a Protection Order

A. “Family or Household Members” May Apply for Protection Order

1. The statute defines family or household members as:

[S]pouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a

person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren. [RCW 26.50.010\(2\)](#).

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 26.50.010\(3\)](#).

3. Same-sex relationships

The protections provided by [RCW 26.50](#) apply equally to those in a gay or lesbian relationship. Nothing in the definition of “family or household member” limits [RCW 26.50](#) to those in a heterosexual relationship.

For additional information on same-gender domestic violence, see Appendix D.

B. Petitions for and by Minors

A person may petition the court for a protection order on behalf of a minor family or household member.

A person thirteen years of age or older may petition the court alleging that he or she has been the victim of violence in a dating relationship in cases where the respondent is sixteen years of age or older, through a parent, guardian, guardian ad litem, or next friend. [RCW 26.50.020\(1\)\(b\) and \(2\)\(b\)](#).

A person over 16 and under 18 years of age may petition for a protection order on his or her own behalf without appointment of a guardian or next friend. The court need not appoint a guardian or guardian ad litem on behalf of a respondent who is over 16 but under 18 years of age. [RCW 26.50.020\(2\) and \(3\)](#).

The court in its discretion may appoint a guardian ad litem for a petitioner or respondent. [RCW 26.50.020\(4\)](#).

A guardian ad litem is required for a petitioner who is under the age of 16.

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

A petition under [RCW 74.34](#) may be brought not only by the “vulnerable adult” but where necessary by family members, a guardian, and/or a legal fiduciary. [RCW 74.34.210](#).

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 26.50.021](#); [RCW 74.34.150](#).

VII. Jurisdiction and Venue

A. Level of Court that Can Issue the Protection Order

1. Ex parte orders

Any Washington State court (district, municipal, or superior) may issue an order pursuant to [RCW 26.50.070](#). [RCW 26.50.020\(5\)](#).

2. Final orders

Superior courts and courts of limited jurisdiction have concurrent jurisdiction to issue protection orders in most situations. However, a final order cannot be issued by a court of limited jurisdiction when:

- a. A superior court has exercised or is exercising jurisdiction over a proceeding under [RCW 26](#) or [RCW 13.34](#) involving the parties; or
- b. The petition for relief presents issues of residential schedule of and contact with children of the parties; or
- c. The petition for relief under [RCW 26.50](#) requests the court to exclude a party from the dwelling which the parties share.

[RCW 26.50.020\(5\)](#).

Many district and municipal courts routinely forward requests for final protection orders to Superior Court when the parties have children together. Even if the protection order does not directly address the minor children, an order barring contact between the adults may make compliance with the parenting plan impractical, (e.g., the arrangements for exchange of the children may need to be adjusted).

3. 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 26.12.060(6) (Family law commissioners have the power to “cause the orders and findings of the family court to be entered in the same manner as orders and findings are entered in cases in the superior court.”)

B. Venue

Venue lies in the county or in the municipality where the petitioner resides unless the petitioner has left the residence or household to avoid abuse, in which case the action may be commenced in the county or municipality of either the previous or the new household or residence. [RCW 26.50.020\(6\)](#).

A person's right to petition for relief under the Domestic Violence Protection Act is not affected by the person leaving the residence or household to avoid abuse. [RCW 26.50.020\(7\)](#).

C. 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.⁵ See [RCW 26.27.231](#).

Regardless of a court's jurisdiction to adjudicate longer-term parenting plan issues, the adult victim is still entitled to seek a "permanent" protection order concerning her own person if she otherwise satisfies the requirements. In addition, emergency residential provisions relating to children should be provided on the same basis as is provided in RCW 26.09. [RCW 26.50.060\(1\)\(d\)](#).

D. 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 26.50.240](#), which provides for personal jurisdiction if:

- The individual is personally served with a petition within this state;

⁵ 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).

- 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 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 acts of domestic violence or stalking, the petitioner or a member of the petitioner's family or household has sought safety or protection in Washington and currently resides in this state; 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. “Communicated or made known” includes, but is not limited to, through the mail, telephonically, or a posting on an electronic communication site or medium. Communication on any electronic medium that is generally available to any individual residing in the state shall be sufficient to exercise jurisdiction. [RCW 26.50.240\(2\)](#).

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. Filing Fees

No fees for filing may be charged to a petitioner seeking relief under [Chapter 26.50 RCW](#). Petitioners shall be provided with the necessary number of certified copies at no cost. [RCW 26.50.040](#). However, service fees can be collected from respondents. [RCW 26.50.060\(1\)\(g\)](#), [26.50.090\(7\)](#).

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 26.50.080](#).

2. Final orders

- Personal Service shall be made upon the respondent “not less than five days prior to the hearing.” [RCW 26.50.020](#). If an ex parte order has been issued, the respondent shall be served with a copy of the ex parte order, and a copy of the petition and notice of date set for hearing on the final order. [RCW 26.50.070](#).
- If timely personal service cannot be accomplished, the court may:

- (i) Continue the hearing for further attempts at personal service; and
- (ii) If the court concludes, that the respondent is concealing himself to avoid personal service, it may:

Allow service by publication as provided in [RCW 26.50.085](#).

Allow service by mail as provided in [RCW 26.50.123](#), if the court determines that the circumstances justifying publication exist and the service by mail is as likely to give actual notice to the respondent as would publication.

- c. If timely personal service cannot be accomplished, the court may reissue the ex parte order for an additional 14-day period. If the court determines that service by publication or mailing is appropriate, the ex parte order may be reissued for a 24-day period. [RCW 26.50.085](#), [26.50.123](#).
- d. The court shall not require more than *two* attempts at obtaining personal service and shall permit service by publication or by mail unless the petitioner requests additional time to attempt personal service. [RCW 26.50.050](#).

B. Service Period of the Order

1. Ex parte order

Personal service of the order (along with a copy of the petition for final order and notice of hearing date) is required, unless the court authorizes service by publication or mailing. [RCW 26.50.070\(4\)](#).

2. Service of final order

Personal service is required unless the order recites that the respondent appeared in person before the court or unless the court authorizes service by publication or mailing.

C. No Service Fees for Personal Service

The sheriff of the county or the peace officers of the municipality in which the respondent resides shall serve the respondent and is required to effectuate personal service *at no cost* to the petitioner unless the petitioner elects to have a private party effect service. [RCW 26.50.040](#); [RCW 26.50.090\(2\)](#).

Cost of Service by Mail or Publication

Petitioner is responsible to pay the cost of publication or mailing unless the county legislative authority allocates funds for service for indigent petitioners. [RCW 26.50.125](#).

X. Relief Available

Protection orders, when properly drafted and enforced, are effective in eliminating or reducing domestic abuse.⁶ 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.⁷

A. Relief Available in a Final Order after Full Hearing

[RCW 26.50.060\(1\)](#) enumerates specific provisions for relief, which may be granted by the court in both ex parte and final orders.

1. Restrain the respondent from committing acts of domestic violence.

Note: Some abusers are discouraged from battering by protection orders that forbid violence and state legal repercussions for failing to follow the order. Whether or not the order requires the abuser is ordered to vacate the joint premises, the order challenges the batterers' sense of entitlement to dominate their partner.⁸

2. Exclude the respondent from the dwelling that the parties share, from the residence, workplace, or school of the petitioner, or from the daycare or school of a child.
3. Prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location.
4. On the same basis as is provided in [Chapter 26.09 RCW](#), the court shall make residential provisions with regard to minor children of the parties. However, parenting plans as specified in [Chapter 26.09 RCW](#) *shall not be required*.

⁶ 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.

⁷ M. Sheeran & E.Meyer, *CIVIL PROTECTION ORDERS: A Guide for Improving Practice*, National Council of Juvenile and Family Court Judges, (2010).

⁸ 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).

5. Duration of Order Regarding Custody of Children: [RCW 26.50.060\(2\)](#) provides that if the order prohibits a respondent from contacting his own child, the “restraint shall be for a fixed period, not exceeding one year.” This limitation does not apply for orders issued under [Chapters 26.09, 26.10](#) or [26.26 RCW](#). The order may be renewed.
6. Order supervised visitation for the respondent with the minor children of the parties. The supervision is to be performed by professionals or someone known to the parties.

Effect on existing parenting plan or child support order: Although a court may make initial determinations of custody in a protection order proceeding, a protection order may not be used to effectuate a *permanent* modification of an existing parenting plan or other previously-entered court order. *In re Marriage of Barone*, 100 Wn. App. 241, 247, 996 P.2d 654 (2000). Thus, in *Barone*, the placement of the children with the mother in a protection order proceeding did not relieve her of a prior obligation to pay child support. *See also In re Marriage of Stewart*, 135 Wn. App. 535, 137 P.3d 25 (2006) (Provision of a domestic violence protection order that prohibited father from having any contact with children until further action in family court was not an impermissible *de facto* modification of the parenting plan).

7. Order a respondent to participate in a domestic violence perpetrator treatment program approved under [RCW 26.50.150](#), or participate in testing, evaluation and/or treatment for substance abuse.
8. Order *other relief necessary for protection* of the petitioner and other family or household members sought to be protected. Order a peace officer to assist. [Although law enforcement can be ordered to provide a civil stand-by to allow the petitioner to recover her home, personal effects, or children, they may limit the time they will stand by to recover personal effects. Other arrangements should be made for recovering large amounts of property.]
9. Require respondent to pay the administrative court costs and service fees, as established by the county, and to reimburse petitioner for costs incurred in bringing the action and attorney fees.

NOTE: No filing fees or service fees are collected from the petitioner.

10. Restrain a party from having any contact with the victim . . . or the victim’s children or members of the victim’s household. If the victim’s children are also the respondent’s children, this restraint shall not exceed one year (but the victim may apply for renewal).

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

11. Require a respondent to submit to electronic monitoring.
12. Restrain the respondent from harassing, following, keeping under physical or electronic surveillance, cyberstalking as defined in [RCW 9.61.260](#), and using telephonic, audiovisual, or other electronic means to monitor the actions, location, or communication (including electronic communications) of a victim of domestic violence, the victim's children, or members of the victim's household.
13. Consider the provisions of [RCW 9.41.800](#), regarding the surrender of weapons. See Chapter 3, III for further discussion.
14. Order possession and use of essential personal effects. The court shall list the essential personal effects with sufficient specificity. Essential personal effects means those items necessary for a person's immediate health, welfare and livelihood and includes, but is not limited to, clothing, cribs, bedding, documents, medications and personal hygiene items. [RCW 26.50.010\(7\)](#).
15. Order use of a vehicle. [RCW 26.50.060\(m\)](#).

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.

B. Relief Available in Ex Parte Order

[RCW 26.50.070\(1\)](#) enumerates the provisions available for relief in an ex parte proceeding where the court has concluded that

“[I]rreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent . . . including an order:

Restraining any party from committing acts of domestic violence;

Restraining any party from going onto the grounds of or entering the dwelling that the parties share, from the residence, workplace, or school of the other, or from the day care or school of a child until further order of the court;

Prohibiting any party from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;

Restraining any party from interfering with the other's custody of the minor children or from removing the children from the jurisdiction of the court;

Restraining any party from having any contact with the victim of domestic violence or the victim's children or members of the victim's household; and

Considering the provisions of [RCW 9.41.800](#) (regarding the surrender of firearms); and

Restraining the respondent from harassing, following, keeping under physical or electronic surveillance, cyberstalking as defined in [RCW 9.61.260](#), and using telephonic, audiovisual, or other electronic means to monitor the actions, location, or communication of a victim of domestic violence, the victim's children, or members of the victim's household. [RCW 26.50.070\(1\)\(a\)-\(g\)](#).

C. Use of “Catch-All” Provision to Provide Additional Relief

Both [RCW 26.50.060](#) and [RCW 26.50.070](#) contain general provisions authorizing other relief needed to protect the victim. As indicated in [RCW 26.50.060\(1\)\(f\)](#), the court is authorized to order relief that is “necessary for the protection of the petitioner and other family or household members.” [RCW 26.50.070\(1\)](#) provides that the court may “grant relief as the court deems proper” including the specific provisions outlined above.

A court, in issuing a protection order, has substantial discretion in crafting provisions that will fully protect the petitioner and her 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 26.50.025\(2\)](#); [RCW 26.50.030\(2\)](#).

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).

D. Provisions Directed to Law Enforcement Officers

Law enforcement can be ordered to:

- Serve notices of hearing and orders;
- Assist in the removal of the perpetrator’s weapons;
- 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, since police officers will generally not resolve disputes over items not listed in the order. 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.

Checklist of Relief Available

RELIEF AVAILABLE	STATUTORY AUTHORITY
<p>NO FURTHER ABUSE</p> <ul style="list-style-type: none"> • to petitioner • to children • to other household members 	<p>RCW 26.50.060(1)(a) RCW 26.50.070(1)(a)</p>
<p>STAY AWAY PROVISIONS</p> <ul style="list-style-type: none"> • from residence • from school, daycare, work place • from other specified location 	<p>RCW 26.50.060(1)(b) and (c) RCW 26.50.070(1)(b) and (c)</p>
<p>NO-CONTACT ORDERS</p> <ul style="list-style-type: none"> • with petitioner • with the children • with other household members • by third parties acting on behalf of respondent 	<p>RCW 26.50.060(1)(f) and (h) RCW 26.50.070(1)(e)</p>
<p>ORDERS TO VACATE</p> <ul style="list-style-type: none"> • not re-enter • surrender keys • not damage premises or petitioner’s property • not shut off utilities or discontinue mail delivery 	<p>RCW 26.50.060(1)(b) RCW 26.50.070(1)(b)</p>
<p>ORDERS CONCERNING WEAPONS</p> <ol style="list-style-type: none"> 1. relinquish weapons 2. relinquish weapons license 	<p>RCW 9.41.800 RCW 26.50.060(1)(k) RCW 26.50.070(1)(f)</p>
<p>ORDERS PROHIBITING SURVEILLANCE</p> <ul style="list-style-type: none"> • no harassing or following • no keeping under physical or electronic surveillance, • no cyberstalking • 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. 	<p>RCW 26.50.060(1)(i) RCW 26.50.070(1)(g)</p>
<p>ORDERS FOR ABUSER TO OBTAIN TREATMENT</p> <ul style="list-style-type: none"> • batterer’s counseling • substance abuse treatment and testing 	<p>RCW 26.50.060(1)(e)</p>
<p>ORDERS CONCERNING CUSTODY</p>	<p>RCW 26.50.060(1)(d) RCW 26.50.070(1)(d)</p>

RELIEF AVAILABLE	STATUTORY AUTHORITY
ORDERS FOR POLICE ASSISTANCE <ul style="list-style-type: none"> • serve notice • arrest for violations • remove weapons • assist with vacate orders • civil standby procedure 	RCW 26.50.060(1)(f) RCW 26.50.080
ORDER RESPONDENT TO PAY ATTORNEY FEE	RCW 26.50.060(1)(g)
ORDER RESPONDENT TO SUBMIT TO ELECTRONIC MONITORING	RCW 26.50.060(1)(j)
ORDER POSSESSION OF ESSENTIAL PERSONAL EFFECTS	RCW 26.50.060(1)(l)
ORDER USE OF VEHICLE	RCW 26.50.060(1)(m)

XI. Special Issues Regarding Ex Parte Orders

A. Authority to Issue Temporary Protection Order (TPO) Ex Parte

[RCW 26.50.070\(1\)](#) provides: “Where an application . . . alleges that irreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent, the court may grant an ex parte temporary order for protection, pending a full hearing. . .”

B. Factors in Determining “Irreparable Injury”

[RCW 26.50.070\(2\)](#) states: “Irreparable injury under this section includes but is not limited to situations in which the respondent has recently threatened petitioner with bodily injury or has engaged in acts of domestic violence against the petitioner.”

Other considerations may include:

1. History of violence
2. Petitioner’s injuries
3. Respondent’s access to weapons
4. Threats to attack or abduct the children
5. Threats or attacks on family or household members
6. Threats of suicide⁹
7. Stalking behavior¹⁰

⁹ The Washington State Domestic Violence Fatality Review found that 29 percent of the domestic violence homicides involved suicide. *Supra* note 4.

¹⁰ 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*

8. Drug and alcohol abuse
9. History of mental disorder
10. History of sexual deviancy/convictions for sexual crimes

C. Telephonic Emergency Protection Orders

Emergency ex parte hearings may be held by telephone. [RCW 26.50.070\(3\)](#).

D. Timing of Hearing

The court must hold an ex parte hearing on a protection order petition in person or by telephone on the day the petition is filed or the next judicial day. [RCW 26.50.070\(3\)](#).

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.

XII. Duration of Order

A. Ex Parte Orders

An order issued pursuant to [RCW 26.50.070](#) is effective for a "fixed period not to exceed fourteen days or twenty-four days if the court has permitted service by publication . . ." [RCW 26.50.070\(4\)](#). Reissuance is permitted.

B. Final Orders

1. Provisions involving the respondent's children.

"If a protection order restrains the respondent from contacting the respondent's minor children the restraint shall be for a fixed period not to exceed one year."

The one-year period does not apply to orders for protection issued under [Chapter 26.09](#), [26.10](#), or [26.26 RCW](#). [RCW 26.50.060\(2\)](#).

NOTE: The court is required to advise the petitioner that if the petitioner wishes to "continue protection for a period beyond one year," in cases involving children,

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.

the petitioner may either seek renewal of the protection order or may seek relief pursuant to [Chapter 26.09](#) or [26.26 RCW](#). [RCW 26.50.060\(2\)](#).

2. Provisions not affecting the respondent’s minor children.

If a respondent is not restrained from contacting respondent’s children, the court may enter an order for either a fixed period of time or may enter a permanent order of protection if “the court finds that the respondent is likely to resume acts of domestic violence against the petitioner or the petitioner’s family or household members or minor children when the order expires . . .” [RCW 26.50.060\(2\)](#).

3. Practical considerations

As a practical matter, law enforcement requires a determinate expiration date, i.e., September 21, 2054, in order to properly enter and track the orders in the law enforcement computer databases. The statewide mandatory Protection Order Form requires an expiration date on the first page. [WPF DV3.015](#).

XIII. Findings Required if Protection Order Not Granted

Under both [RCW 26.50.070\(6\)](#) (ex parte orders) and [RCW 26.50.060\(7\)](#) (final orders), the court is required to make written findings explaining why the order was not granted.

XIV. Evidentiary Issues

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

The Rules of Evidence (ER) are permissive rather than mandatory in all protection order proceedings under [RCW 26.50](#), [RCW 7.90](#), [RCW 7.92](#), [RCW 10.14](#), or [RCW 74.34](#).

[ER 1101\(c\)\(4\)](#) provides that the Rules of Evidence, except for the rules and statutes concerning privileges, need not be applied during hearings for various protective or anti-harassment orders. *See 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 Wash. 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”).

However, if a protection order is being requested as part of another type of proceeding, such as a dissolution action, it may be appropriate to apply the rules of evidence in making any final orders. The rationale for not mandating application of the rules of evidence in protection order hearings was to further public policy in creating a simple, pro se–friendly procedure. However, when the parties are afforded a full trial with sufficient time to call witnesses and engage in discovery, such as a dissolution trial, the rationale for dispensing with the rules of evidence are far less persuasive.

B. Use of Information in a Domestic Violence Database

The court is required to give notice and an opportunity to be heard with regards to any information it intends to consider from the domestic violence database.

When a judge proposes to consider information from a domestic violence database, the judge 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 litigants’ safety concerns. The judge has discretion not to disclose information that he or she does not propose to consider.

[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 4th 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.

XV. Conducting the Hearing

In addition to the normal concerns that judges should have that the process appear fair and accessible to the parties, there are special concerns when domestic violence victims must appear in the same courtroom as their abuser, particularly when they may be appearing pro se.

The courtroom should be set up to ensure the parties and their witnesses do not have to have direct contact with the other party and his or her witnesses and that the parties are sufficiently kept separate so that one party is not able to talk or signal to the other party before or after the hearing. A support person such as domestic violence advocate should be allowed to stand with a party before the bench to provide physical separation between the parties and some sense of security.

NOTE: Domestic violence advocates can be encouraged to review orders with petitioner following hearings, as there are times that litigants are too fearful, upset, or reluctant to ask questions in court.

A. Non-English Speaking Parties and Recent Immigrants

Non-English speaking parties and those who have recently arrived in this country present special concerns regarding representation, as they may not understand court procedures due to language or cultural barriers.

The Administrative Office of the Courts has translated the Petition for Order for Protection, the Temporary Order for Protection, and Notice of Hearing and the Order for Protection instructions into languages spoken by the significant non-English speaking populations: Spanish, Russian, Cambodian, Vietnamese, Laotian, Korean, and Chinese. The instructions include a model form. An update of the informational brochure, and other translations, are pending. Copies of the translated instructions are available on paper and electronically in a PDF format. The PDF versions are posted on the Washington Courts Internet site.¹¹

The United States Department of Justice has taken the position that state courts that fail to provide language access to non-English speaking litigants may be in violation of long-standing civil rights requirements.¹² The Department of Justice has developed a resource to help state and local courts assess and improve their language assistance services for limited English proficient (LEP) litigants, victims, and witnesses who need access to court services.¹³

An interpreter shall be appointed for any party who (a) cannot readily speak or understand the English language or (b) cannot readily understand or communicate in spoken language due to a hearing or speech impairment. [RCW 26.50.055\(1\)](#).¹⁴

B. Consolidation of Actions

If a party files an action under [Chapter 26.09](#), [26.10](#), or [26.26 RCW](#), an order issued previously under [Chapter 26.50 RCW](#) may be consolidated under the new action. [RCW 26.50.025\(2\)](#).

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 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

¹¹ For further information contact AOC Legal Services, PO Box 41174, Olympia, WA 98504-1174. Temple Forms Line: 360-705-5328 or <http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=16>.

¹² Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq. (Title VI), and the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. § 3 789d(c) (Safe Streets Act).

¹³ http://www.lep.gov/resources/courts/022814_Planning_Tool/February_2014_Language_Access_Planning_and_Technical_Assistance_Tool_for_Courts_508_Version.pdf

¹⁴ Washington State has a statewide interpreter commission. For more information go to: http://www.courts.wa.gov/programs_orgs/pos_interpret/index.cfm?fa=pos_interpret.display&fileName=interpreterCommission

proceedings. In other instances, the Domestic Violence Database 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 an Order of Protection (DV-1.010 and DV-1.020) directs the petitioner to disclose any pending actions. [RCW 26.50.030\(1\)](#) requires the parties to disclose any other litigation concerning the children of the parties. [RCW 26.50.030\(2\)](#) 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 . . .”

C. Conflicting Court Orders

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 26.50.160](#). [RCW 26.50.135\(1\)](#) further provides that courts shall consult with the Judicial Information System, if available, 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](#).¹⁵ The guidelines are as follows:

- a. Information systems are checked to determine if there is an existing order before another one is issued.
- b. 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.
- c. There is a process to reconcile conflicting and duplicative orders.

¹⁵ The report to the legislature can be found at:
http://www.courts.wa.gov/programs_orgs/gjc/documents/dv%20protocolsdraftfinalFINAL.pdf

- d. 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.
- e. There is a biennial review of the institution of and effectiveness of the policies.

D. Agreed Orders and Mediation

See also discussion of mediation in Parenting Plans in Chapter 10, 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.¹⁶

XVI. Mutual Protection Orders Disallowed

Unless done to realign the parties, the court may **not** enter an order for protection to a party who has not properly filed and served a petition. See Section XVII below. This section of the statute is a reflection that mutual protection orders can create the following problems¹⁷:

- 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.

¹⁶ N. Thoennes , P. Salem & J. Pearson. *Mediation and domestic violence: Current policies and practices*. Family and Conciliation Courts Review, 33, 6-29 (1995).

¹⁷ See generally, J. Zorza, *What is Wrong with Mutual Orders of Protection?*, 1 Fam. And Intimate Partner Violence Q. 127, 2008.

XVII. 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 26.50.060\(4\)](#) .

B. Consolidation of Actions

An order issued under [RCW 26.50](#) may be consolidated with an action filed under [RCW 26.09](#), [26.10](#), or [26.26](#). [RCW 26.50.025\(2\)](#). See Section XV, B.

XVIII. Renewal of Protection Orders

Where a protected party has an order for a fixed time period, the petitioner may apply to renew the order by filing a petition for renewal within three months prior to the expiration of the existing order along with a description of why the petitioner seeks to renew the protection order. [RCW 26.50.060\(3\)](#).

The court *shall* grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume acts of domestic violence against the petitioner or the petitioner's children or family or household members when the order expires. [RCW 26.50.060\(3\)](#). The court may renew the protection order for another fixed time period or may enter a permanent order as provided in this section. [RCW 26.50.060\(3\)](#).

XIX. Modifications of Civil Protection Orders

A. Modification or Termination Generally

[RCW 26.50.130\(1\)](#) provides that the court may modify or terminate a protection order “upon application with notice to all parties and after a hearing.”

Protection orders may be modified to include any remedy that could have been included in the initial order.

Judges hearing modification of protection order requests should be well acquainted with the history of the relationship between the parties before entering a modification.

B. Modification or Termination of Orders of Two Year Duration or More

In response to the Supreme Court's decision in *Freeman v. Freeman*, 164 Wn. 2d 664, 239 P.3d 557 (2010) (reliance on New Jersey caselaw for standards to modify or terminate a protection order), the legislature passed [Laws of 2011, §137 \(SHB 1565\)](#). To modify or terminate a protection order of a duration of two years or more, the restrained

party must demonstrate, by a preponderance of evidence, that there has been a substantial change in circumstances such that the perpetrator is not likely to resume acts of domestic violence against the protected party. [RCW 26.50.130\(3\)\(a\)](#).

The court shall deny the motion prior to setting a hearing unless it finds that adequate cause for hearing the motion is established by the declarations. [RCW 26.50.130\(2\)](#). There is no burden on the protected party to establish he or she is in current fear of imminent harm by the perpetrator. [RCW 26.50.130\(3\)\(a\)](#).

C. Factors to Consider in Determining a Substantial Change of Circumstances

The court may consider (but is not limited to) the following factors:

- whether the restrained party has committed or threatened domestic violence,
- whether the restrained party has violated the order for protection,
- whether the restrained party has exhibited suicidal ideation or attempts,
- whether the restrained party has committed criminal acts,
- whether the restrained party has entered into domestic violence treatment or counseling,
- whether the restrained party has sought treatment for drugs/alcohol (if applicable to the Order for Protection),
- whether the protected party consents to the modification/termination,
- the distance between the restrained and protected parties, or
- other factors relating to a substantial change of circumstances.

[RCW 26.50.130\(c\)](#).

In determining whether there has been a substantial change in circumstances, the court may not base its determination solely on: (i) The fact that time has passed without a violation of the order; or (ii) the fact that the respondent or petitioner has relocated to an area more distant from the other party. [RCW 26.50.130\(d\)](#). The court may also decline to terminate an order, notwithstanding a substantial change of circumstances, if the court finds that the underlying acts of domestic violence that were the basis for the order were sufficiently severe. [RCW 26.50.130\(e\)](#).

D. Modification or Termination Upon Request of the Petitioner

Upon a motion by a petitioner, the court may modify or terminate an existing order for protection. The court shall hear the motion without an adequate cause hearing. [RCW 26.50.130\(5\)](#).

Research indicates that domestic violence victims are reasonably accurate at predicting whether they will be endangered by future domestic violence, and that they know better than anyone else what will increase or decrease their safety.¹⁸ In determining whether to modify or terminate an order upon the motion of the protected party, it is recommended that the court “offer the petitioner the opportunity to consult with an advocate to discuss safety issues and other alternatives. . .[and e]xplain to a petitioner who wishes to withdraw her petition that she is always welcome to seek a new order if the violence or threat of violence resumes after dismissal, modification or termination of the order.”¹⁹

XX. Electronic Record Keeping

A. Domestic Violence Database

[RCW 26.50.160](#) requires that the Judicial Information System be available to all district, municipal, and superior courts, with one of its purposes being to avoid the issuance of competing protective orders. The system contains the name and cause number for every protection order issued pursuant to [RCW 26.50](#), every no-contact issued under [RCW 10.99](#), every anti-harassment issued pursuant to [RCW 10.14](#), every sexual assault protection order issued pursuant to [RCW 7.90](#), every dissolution action issued pursuant to [RCW 26.09](#), every third-party custody action issued pursuant to [RCW 26.10](#), every parentage action issued pursuant to [RCW 26.10](#), every restraining order obtained under [RCW 26.44](#), all foreign protection orders filed pursuant to [RCW 26.52](#), and every order for the protection of a vulnerable adult issued pursuant to [RCW 74.34](#). The criminal history of all parties shall also be entered into the system along with “[o]ther relevant information necessary to assist courts in issuing orders under this chapter as determined by the judicial information system committee.” [RCW 26.50.160\(3\)](#).

[ER 1101\(c\)\(4\)](#) provides that a court may refer to the Domestic Violence Database when ruling on a petition for a domestic violence protection order or an anti-harassment order. That section provides:

When a judge proposes to consider information from a domestic violence database, the judge 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 litigants' safety concerns. The judge has discretion not to disclose information that he or she does not propose to consider.

The current version of the database is accessible through the Judicial Access Browser System (JABS). The Administrative Office of the Courts has prepared detailed

¹⁸ L. Bennett Cattaneo, M.E. Bell, L.A. Goodwin, & M. Dutton, *Intimate Partner Violence Victims' Accuracy in Assessing Their Risk of Reabuse*. 22 J. Fam. Violence 429 (2007).

¹⁹ M. Sheeran & E. Meyer, *Civil Protection Orders: A Guide for Improving Practice*, National Council of Juvenile and Family Court Judges, Reno, NV (2010), available online at: http://www.ncjfcj.org/images/stories/dept/fvd/pdf/cpo_guide.pdf.

instructions for accessing JABS. A detailed discussion of the domestic violence database is found in Chapter 9.

B. Computer-Based Intelligence Information System

Virtually all of the orders that are required to be entered into the domestic violence database are also to be entered into the computer-based intelligence information system. The clerk of the court is to forward a copy of the order on or before the next judicial day to the law enforcement agency specified in the order. That agency is to enter the order into a computer-based criminal intelligence system.²⁰ If the order is modified or terminated, the clerk is to forward a copy of the superseding document to the appropriate law enforcement agency.

Entry into the computer-based criminal intelligence information system constitutes notice that to all law enforcement of the existence of the order.

Presentation of an unexpired, certified copy of a protection order with proof of service is sufficient for a law enforcement officer to enforce the order regardless of the presence of the order in the law enforcement computer-based criminal intelligence information system. [RCW 26.50.115\(3\)](#).

Even though entry into electronic record-keeping systems is required, the protected party should be provided with a copy of the order and told to keep it with him or her at all times. In *Donaldson v. Seattle*, 65 Wn. App. 661, 831 P.2d 1098 (1992), the order was not entered into the computer system and the petitioner did not have a copy of the order. The court said the police could not be expected to make an arrest under the circumstances.

XXI. 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.²¹

This situation, while lamentable, 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.

²⁰ The system currently in use is the Washington Crime Information Center (WACIC), which is available to all law enforcement agencies in the State.

²¹ 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)

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

In addition to applicable criminal penalties, “violation of an order issued under this chapter [[RCW 26.50](#)], [chapter 7.92](#), [7.90](#), [9A.46](#), [9.94A](#), [10.99](#), [26.09](#), [26.10](#), [26.26](#), or [74.34 RCW](#), or of a valid foreign protection order as defined in [RCW 26.52.020](#), shall also constitute contempt of court, and is subject to the penalties prescribed by law.” [RCW 26.50.110\(3\)](#).

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 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.

C. Procedure for Imposing Sanctions

1. Direct contempt may lead to summary imposition of either remedial or punitive sanctions

Direct contempt is conduct that occurs in the direct presence of 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 Wash. 180, 162 P. 38 (1917).

- a. The court must impose the sanctions either immediately after the contempt occurs or at the end of the proceeding.
- b. The sanction may be only for the purpose of preserving order in the court and protecting the authority and dignity of the court.
- c. 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).
- d. The sanction imposed may be remedial or punitive:
 - A remedial sanction forfeiture may not exceed \$500 for each day the contempt continues; and
 - 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.

3. The person accused of contempt is entitled to notice and hearing. [RCW 7.21.030\(1\)](#).
4. A person found to have committed contempt may be sanctioned as follows:
 - (i) 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\(2\)\(a\)](#);
 - (ii) By a forfeiture not to exceed \$2,000 for each day the contempt continues ([RCW 7.21.030\(2\)\(b\)](#));
 - (iii) By entry of an order designed to ensure compliance with a prior court order ([RCW 7.21.030\(2\)\(c\)](#));
 - (iv) 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\(2\)\(d\)](#));
 - (v) 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\(3\)](#));

3. 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.](#)

D. 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.

XXI. Criminal Enforcement of Protection Order Violations

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

A. What Violations of Orders are Subject to Criminal Sanctions?

[RCW 26.50.110\(1\)\(a\)](#) provides:

Whenever an order is granted under this chapter [[RCW 26.50](#)], [chapter 7.92](#), [7.90](#), [9A.46](#), [9.94A](#), [10.99](#), [26.09](#), [26.10](#), [26.26](#), or [74.34 RCW](#), or there is a valid foreign protection order as defined in [RCW 26.52.020](#), and the respondent or person to be restrained knows of the order, a violation of the following provisions is a gross misdemeanor:

- (i) The restraint provisions prohibiting acts or threats of violence against, or stalking of, a protected party, or restraint provisions prohibiting contact with a protected party;
- (ii) A provision excluding the person from a residence, workplace, school, or day care;
- (iii) A provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location;
- (iv) A provision prohibiting interfering with the protected party's efforts to remove a pet owned, possessed, leased, kept, or held by the petitioner, respondent, or a minor child residing with either the petitioner or the respondent; or
- (v) A provision of a foreign protection order specifically indicating that a violation will be a crime.

B. Applicable Penalties

A criminal violation of a protection order is generally a gross misdemeanor. [RCW 26.50.110\(1\)](#). The violation is a felony, however, if:

1. The defendant has had two prior convictions for violating orders issued under any of the following provisions: [RCW 7.92](#), [7.90](#), [9A.46](#), [9.94A](#), [10.99](#), [26.09](#), [26.10](#), [26.26](#), [26.50](#), or [74.34 RCW](#), or there is a valid foreign protection order as defined

in [RCW 26.52.020](#). The previous conviction need not involve the same person as the victim in the current offense; or

2. The act that violates the order is an assault (not amounting to an assault in the first or second degree) or is an act “that is reckless and creates a substantial risk of death or serious physical injury to another person.”

Felony violations of a protection order have been classified as seriousness level five offenses. [RCW 9.94A.515](#). A felony violation of a protection order is included within the definition of “crime against person” and subject to the filing standards of [RCW 9.94A.411](#).

XXII. Full Faith and Credit—Violence Against Women Act (VAWA)

RCW 26.52: The Foreign Protection Order Full Faith and Credit Act

In 1999, in compliance with the Violence Against Women Act (VAWA), the Legislature adopted [RCW 26.52](#). 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

[RCW 26.52.010\(3\)](#) defines a foreign protection order as:

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?

As is true with Washington protection orders pursuant to [RCW 26.50.110\(1\)](#), 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 in [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.

The clerk of the court in which the foreign protection order is filed is required to enter it in the Domestic Violence Database. [RCW 26.50.160\(1\)](#).

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.

NOTE: A foreign protection order must be filed with a Washington court in order to be entered into the Domestic Violence Database.

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 that prohibits the person restrained from “contacting or communicating with another person, or of a provision excluding the person under restraint from a residence, workplace, school, or day care, or of a provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime, is punishable under [RCW 26.50.110](#).” [RCW 26.52.070\(1\)](#).

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.

XXIV. 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 at the in Appendix C: Federal Domestic Violence Laws.