

## Law re: Concurrent Civil Protection Order & Criminal Proceedings

**RCW 7.105.105(6):** “Relief under this chapter must not be denied or delayed on the grounds that the relief is available in another action. The court shall not defer acting on a petition for a protection order nor grant a petitioner less than the full relief that the petitioner is otherwise entitled to under this chapter because there is, or could be, another proceeding involving the parties including, but not limited to, any potential or pending family law matter or criminal matter.”<sup>1</sup>

**RCW 7.105.200(4):** [In hearings], “[w]hen considering any request to stay, continue, or delay a hearing under this chapter because of the pendency of a parallel criminal investigation or prosecution of the respondent, courts shall apply a rebuttable presumption against such delay and give due recognition to the purpose of this chapter to provide victims quick and effective relief. Courts must consider on the record the following factors:

- (a) The extent to which a defendant's Fifth Amendment rights are or are not implicated, given the special nature of protection order proceedings, which burden a defendant's Fifth Amendment privilege substantially less than do other civil proceedings;
- (b) Similarities between the civil and criminal cases;
- (c) Status of the criminal case;
- (d) The interests of the petitioners in proceeding expeditiously with litigation and the potential prejudice and risk to petitioners of a delay;
- (e) The burden that any particular aspect of the proceeding may impose on respondents;
- (f) The convenience of the court in the management of its cases and the efficient use of judicial resources;
- (g) The interests of persons not parties to the civil litigation; and
- (h) The interest of the public in the pending civil and criminal litigation.”<sup>2</sup>

**RCW 7.105.225(2)(c)-(d):** “The court may not deny or dismiss a petition for a protection order on the grounds that... 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 [or] the relief sought by the petitioner may be available in a different action or proceeding, or criminal charges are pending against the respondent...”

**RCW 7.105.375:** “The practice of dismissing or suspending a criminal prosecution in exchange for the issuance of a protection order undermines the purposes of this chapter. Nothing in this chapter shall be construed as encouraging that practice.”

**RCW 7.105.400(4):** “When considering any request to stay, continue, or delay a hearing [on a temporary order] under this chapter because of the pendency of a parallel criminal investigation or prosecution of the respondent, courts shall apply a rebuttable presumption against such delay and give due recognition to the purpose of this chapter to provide victims quick and effective relief. Courts must consider on the record the following factors:

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<sup>1</sup> This statute codifies holdings in *Smith v. Smith*, 1 Wn. App. 2d 122, 404 P.3d 101 (2017), that the “mere pendency” of a parallel criminal case does not entitle the defendant to a stay of the protection order proceedings, but requires application of the eight factors identified in *King v. Olympic Pipeline*, *infra*, and *Juarez v. Juarez*, 195 Wn. App. 880, 382 P.3d 13 (2016), that short-term relief does not fulfill the legislative intent of the Domestic Violence Prevention Act (DVPA), and that denying lengthier protection because of the availability of other relief or pendency of other proceedings runs contrary to the DVPA.

<sup>2</sup> This statute codifies the analysis prescribed in *King v. Olympic Pipeline*, 104 Wn. App. 338, 16 P.3d 45 (2000).

- (a) The extent to which a defendant's Fifth Amendment rights are or are not implicated, given the special nature of protection order proceedings which burden a defendant's Fifth Amendment privilege substantially less than do other civil proceedings;
- (b) Similarities between the civil and criminal cases;
- (c) Status of the criminal case;
- (d) The interests of the petitioners in proceeding expeditiously with litigation and the potential prejudice and risk to petitioners of a delay;
- (e) The burden that any particular aspect of the proceeding may impose on respondents;
- (f) The convenience of the court in the management of its cases and the efficient use of judicial resources;
- (g) The interests of persons not parties to the civil litigation; and
- (h) The interest of the public in the pending civil and criminal litigation.”<sup>3</sup>

**RCW 7.105.405(5)(d), (6)(d)**: In determining whether there has been a substantial change in circumstances for **renewal** of a protection order [other than an ERPO ], the court may consider, in addition to other unweighted factors, “whether the respondent has been convicted of criminal activity since the protection order was entered...” However, the court shall not deny a motion to renew because “[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” or “[t]he relief sought by the petitioner may be available in a different action or proceeding....”

**RCW 7.105.500(4)(d)**: In determining whether to **modify or terminate** a protection order [other than an ERPO or VAPO], the court may consider “[w]hether the respondent has been convicted of criminal activity since the protection order was entered.”

**RCW 7.105.565(2)**: “Any proceeding under this chapter is in addition to other civil or criminal remedies” and “Nothing in this chapter shall be construed as requiring criminal charges to be filed as a condition of a protection order being issued.”

**RCW 7.105.900(3)(b)**: “A victim [of sexual assault] should be able to expediently seek a civil remedy requiring that the perpetrator stay away from the victim, independent of the criminal process and regardless of whether related criminal charges are pending.”

**RCW 7.105.900(4)**: “The legislature finds that all of these civil protection orders are essential tools that can increase safety for victims of domestic violence, sexual assault, stalking, abuse of vulnerable adults, unlawful harassment, and threats of gun violence to obtain immediate protection for themselves apart from the criminal legal system. Victims are in the best position to know what their safety needs are and should be able to seek these crucial protections without having to rely on the criminal legal system process. The legislature further finds the surrender of firearms in civil protection orders is critical to public health. In keeping with the harm reduction approach of this lifesaving tool, the legislature finds that it is appropriate to allow for immunity from prosecution for certain offenses when appropriate to create a safe harbor from prosecution for certain offenses to increase compliance with orders to surrender and prohibit firearms.”



<sup>3</sup> This statute codifies the analysis prescribed in *King v. Olympic Pipeline*, 104 Wn. App. 338, 16 P.3d 45 (2000).