

# CIVIL PROTECTION ORDER (CPO) TIP SHEET

## SERVICE:

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- Respondent must be personally or electronically served at least 5 court days before the hearing date unless waived by the nonmoving party. **RCW 7.105.165(1).**
- Verification of notice is required for electronic service. **RCW 7.105.150(1)(b)(iv).**
- No formal motion is required for service by mail. It is permitted when i) personal service is required, there have been two unsuccessful attempts, and electronic service is not possible; or ii) personal service is not required and there were two unsuccessful attempts at personal or electronic service. **RCW 7.105.150(1)(c).**
- Service by publication is only permitted in cases where all other means of service have been unsuccessful or are not possible. **RCW 7.105.150(1)(d).**
- The court may order more than one form of service. **RCW 7.105.150(2).**

## PROCEDURE:

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- Hearings may be conducted upon information in the petition, live testimony of the parties should they choose to testify, and additional sworn declarations. **RCW 7.105.200(5).**
- Interpreters must be provided by the court at no cost to the parties. **RCW 7.105.245.**
- Mandatory reporters must report abuse of own children or face criminal charges. ***State v. James-Buhl*, 198 Wn. App. 288, 393 P.3d 817 (2017).**
- If Respondent asserts privilege against self-incrimination and requests a continuance due to pending criminal proceedings, there is a rebuttable presumption against such a delay. **RCW 7.105.200(4); RCW 7.105.400(4); *Smith v. Smith*, 1 Wn. App.2d 122, 404 P.3d 101 (2017).**
- The court shall provide written reasons for protection order denials. **RCW 7.105.225(5); RCW 7.105.305(3)** (temporary CPOS other than ERPOs); ***Maldonado v. Maldonado*, 197 Wn. App. 779, 391 P.3d 546 (2017).**

## EVIDENCE:

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- Except for privileges, the rape shield statute, and ER 412 and 413, the rules of evidence need not be applied. **RCW 7.105.200(8); ER 1101(c)(4).** See also, ***Gourley v. Gourley*, 152 Wn.2d. 460, 145 P.3d 1185 (2006).**
- Cross examination and live testimony are not required. They may be allowed only when determined necessary on a case-by-case basis. **RCW 7.105.200(5); *Aiken v. Aiken*, 187 Wn.2d 491, 387 P.3d 680 (2017).**
- Discovery is disfavored and requires permission from the court. **RCW 7.105.200(7); *Scheib v. Crosby*, 160 Wn. App. 345 (2011).**
- Recent acts of domestic violence are not required for a protection order. **RCW 7.105.225(2)(e); *Spence v. Kaminski*, 103 Wn. App. 325, 12 P.3d 1030 (2000).**
- Mutual protection orders are not permitted unless both parties separately plead and prove domestic violence. **RCW 7.105.310(4)(b).**
- An Order for Protection shall be granted if the court finds by a preponderance of the evidence that the petitioner has proved the criteria specified in RCW 7.105.225(1)(a)-(f). See also, ***In re Levias*, 83 Wn.2d 253, 517 P.2d 588 (1973).**

## FINDINGS & RELIEF:

- Relief related to custody and parenting plans may not be limited or denied just because similar relief is available in family law action. **RCW 7.105.310(1)(f); RCW 7.105.225(2); *Maldonado v. Maldonado*, 197 Wn. App. 779, 391 P.3d 546 (2017); *Juarez v. Juarez*, 195 Wn. App. 880, 382 P.3d 13 (2016).**
- Domestic violence treatment providers must be certified. **RCW 7.105.310(1)(g); WAC 388-60B-0025.**
- Parties who have obtained protection orders may be awarded costs and fees. **RCW 7.105.310(1)(j); *Gourley v. Gourley*, 124 Wn. App. 52, 98 P.3d 816 (2004).** The court may not order Petitioner to pay Respondent's attorneys' fees. **RCW 7.105.310(3)(b).**
- The court may order Respondent to submit to electronic monitoring. **RCW 7.105.310(1)(l); *Davis v. Arledge*, 531 P.3d 792 (2023).**
- Petitioner's children and household members are entitled to full statutory protections even if there is no proof of direct harm. ***Rodriguez v. Zavala*, 188 Wn.2d 586, 398 P.3d 1071 (2017).**
- A parent may not use unreasonable force to discipline a child. A child who is assaulted by a parent should be protected by a DVPO. **RCW 9A.16.100; *Maldonado v. Maldonado*, 197 Wn. App. 779, 391 P.3d 546 (2017).**
- If domestic violence is proven by a preponderance, the court must enter a DVPO even if another action is pending. **RCW 7.105.550; *Juarez v. Juarez*, 195 Wn. App. 880, 382 P.3d 13 (2016).**
- If granted, Petitioner is entitled to DVPO for a fixed period of one year or longer. **RCW 7.105.315; *Juarez v. Juarez*, 195 Wn. App. 880, 382 P.3d 13 (2016).**
- A court order which prevented husband from contacting immigration and related agencies was an unconstitutional prior restraint on husband's free speech. However, the court may craft a narrowly-tailored order tied to its specific factual findings regarding harassing and libelous behavior. ***In re Marriage of Meredith*, 148 Wn. App. 887 (2009).**
- The phrase "no hostile contact" as a condition in a criminal case was found to be vague and therefore unenforceable. ***State v. Shreve*, 538 P.3d 958 (2023).**

## EFFECT ON A PARENTING PLAN:

- Joint decision making cannot be ordered if there is (1) history of acts of domestic violence, or (2) an isolated incident amounting to a felony. ***Matter of the Marriage of C.M.C.*, 87 Wn. App. 84, 940 P.2d 669 (1997).**
- A DVPO may not be used to permanently modify a parenting plan or child support order. ***In re Marriage of Barone*, 100 Wn. App. 241, 996 P.2d 654 (2000).**
- A protection order is not an impermissible modification of a parenting plan. ***In re Marriage of Stewart*, 133 Wn. App. 545, 137 P.3d 25 (2006); *Maldonado v. Maldonado*, 197 Wn. App. 779, 391 P.3d 546 (2017).**
- Protections may include a change in visitation schedules. ***Maldonado v. Maldonado*, 197 Wn. App. 779, 391 P.3d 546 (2017).**
- If a protection order restrains Respondent from contacting Respondent's minor children, the restraints shall be for a fixed period not to exceed one year. **RCW 7.105.315(2); *In re Marriage of Stewart*, 133 Wn. App. 545, 137 P.3d 25 (2006).**
- A domestic violence protection order is not a parenting plan for purposes of custodial interference statute. ***State v. Veliz*, 176 Wn.2d 849, 298 P.3d 75 (2013).**
- A DVPO is not the type of "court order" contemplated by RCW 26.09.525(2) to determine whether the presumption in favor of relocation applies. ***Cowan v. Cowan*, Wn. App. Div. I (2023).**

## WEAPONS SURRENDER & VIOLATIONS:

- The Court shall consider an OTSW when any temporary or full protection order is issued. But see the constitutional challenges in *State v. Flannery*, 520 P.3d 517 (2022) and *United States v. Rahimi* (decision pending in U.S. Supreme Court). See also, E2SHB 1715 as incorporated into Chapter 7.105 RCW and Chapter 9.41 RCW.
- The court when issuing an order authorized under Chapter 7.105 RCW shall issue an OTSW upon a showing by a preponderance of the evidence that a party has used, displayed, or threatened to use a firearm or other dangerous weapon in a felony or is ineligible to possess a firearm. RCW 9.41.800(1).
- The Court shall order surrender when issuing an order authorized under Chapter 7.105 RCW when:
  - the party received notice and opportunity to participate;
  - the order restrains the party from harassing, stalking, or threatening an intimate partner, the protected person, or child of the intimate partner, protected person or child; and
  - the order includes a finding that the party represents a credible threat to the physical safety of the intimate partner, protected person OR by its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner, protected person, or child that would reasonably be expected to cause bodily injury. RCW 9.41.800(2).
- The court may issue a temporary OTSW and prohibit the purchase of firearms or dangerous weapons, without notice, if it finds that irreparable injury could result if an order is not issued until the time for response elapsed. RCW 9.41.800(3).
- In any proceeding in which the court has entered a temporary protection order and an immediate OTSW without notice to Respondent, and after the hearing the court denies the petition for a full protection order after notice to Respondent, the OTSW must remain in effect until the period for Petitioner to file a motion for reconsideration or revision has passed. RCW 7.105.362(1).
- The party ordered to surrender weapons has the burden to prove compliance by a preponderance of the evidence. *Braatz v. Braatz*, 2 Wn. App.2d 889, 413 P.3d 612 (2018).
- Any violations of a domestic violence protection order may be a crime and shall also constitute contempt of court. RCW 7.105.450(3).