

# CHAPTER 7.105 RCW & RCW 9.41.800 ET SEQ. FREQUENTLY ASKED QUESTIONS (FAQ)

## LEGISLATIVE INTENT:

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**Q: Why was legislation passed to consolidate six types of civil protection orders into one statute?**

A: See [RCW 7.105.900](#). “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.... To better achieve these important public purposes, the legislature further finds the need to clarify and simplify these civil protection order statutes to make them more understandable and accessible to victims seeking relief and to respondents who are subject to the court process. An efficient and effective civil process can provide necessary relief many victims require in order to escape and prevent harm.”

## FILING:

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**Q: When must district court transfer a case to superior court?**

A: See [RCW 7.105.050](#). Domestic Violence Protection Orders, Sexual Assault Protection Orders, Stalking Protection Orders, and Antiharassment Protection Orders must be transferred to superior court when:

- A superior court has exercised or is exercising jurisdiction over a proceeding involving the parties;
- The action would have the effect of interfering with a respondent’s care, control, or custody of the respondent’s minor child;
- The action would affect the use or enjoyment of real property for which the respondent has a cognizable claim or would exclude a party from a shared dwelling;
- The petitioner, victim, or respondent is under 18 years of age; or
- The district court is unable to verify whether there are potentially conflicting or related orders involving the parties as required by [RCW 7.105.105](#) or [7.105.555](#).

See also, [RCW 7.105.070](#). District courts have limited jurisdiction over the issuance and enforcement of temporary Extreme Risk Protection Orders, and shall transfer to superior court for the full hearing. Juvenile court may hear Extreme Risk Protection Order proceedings where the respondent is under 18 years of age.

See also, [RCW 7.105.065](#). Superior courts have jurisdiction over Vulnerable Adult Protection Orders.

**Q: Are there permissive transfers, or just circumstances when there must be a mandatory transfer?**

A: The statute does not provide for permissive transfers, consistent with the legislative intent to “harmonize and standardize” the protection order process. See [RCW 7.105.900\(5\)](#).

“Those who participate in the protection order process often find it difficult to navigate the statutes, which were adopted at different times and contain differing jurisdictional approaches, procedures, definitions, and types of relief offered, among other differences, all of which can create barriers and cause confusion. Harmonizing and standardizing provisions where there is not a need for a specific, different approach can provide more uniformity among the laws and significantly reduce these obstacles. The legislature finds that these improvements are needed to help ensure that protection orders and corresponding court processes are more easily accessible to all litigants, particularly parties who may experience higher barriers to accessing justice.”

**Q: If a litigant has a pending family law case in another county, may we ask them to file their protection order case there?**

A: See [RCW 7.105.105\(5\)](#). “The petition may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties, except in cases where the court has realigned the parties in accordance with [RCW 7.105.210](#).”

See [RCW 7.105.106\(6\)](#). “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.”

See [RCW 7.105.100\(7\)](#). “If a court reviewing the petition determines that it was not filed in the correct court, the court shall enter findings establishing the correct court, and direct the clerk to transfer the petition to the correct court and to provide notice of the transfer to all parties who have appeared.”

See also, p. 2 of the *Resource List – Civil Protection Orders* for an example of information that might be provided to litigants regarding the transfer process

## SERVICE:

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**Q: When must we request that law enforcement serve the documents?**

A: See [RCW 7.105.150\(1\)\(a\)\(i\)\(A\)-\(D\)](#) and [RCW 9.41.800\(7\)](#). Personal service must be made by law enforcement in the following cases:

- cases requiring the surrender of firearms, dangerous weapons, and concealed pistol license;
- cases that involve transferring custody of a child/children from the respondent to the petitioner;
- cases involving vacating the respondent from the parties’ shared residence; and
- cases involving a respondent who is incarcerated.

See also, [RCW 7.105.150\(1\)\(b\)\(i\)](#). Subsequent motions and orders may be served electronically once “...firearms and concealed pistol licenses have been surrendered and verified by the court, or there is evidence the respondent does not possess firearms, the restrained party has been vacated from the

shared residence, or the custody of the child or children has been transferred, per court order, or the respondent is no longer incarcerated...”

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

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

See also, [RCW 7.105.150\(1\)\(b\)\(ii\)](#). “Service by electronic means must be made by a law enforcement agency, unless the petitioner elects to have the respondent served by any person who is not a party to the action, is 18 years of age or older and competent to be a witness, and can provide sworn proof of service to the court as required.”

**Q: When must electronic service be approved?**

See [RCW 7.105.150\(1\)\(b\)\(ii\)](#). Court authorization permitting electronic service is not required except in cases specified above in [RCW 7.105.150\(1\)\(a\)\(i\)\(A\)-\(D\)](#). “In those cases, either request of the petitioner, or good cause for granting an order for electronic service, such as two failed attempts at personal service, are required to authorize service by electronic means. No formal motion is necessary.”

See also, *Electronic Civil Protection Order Service – Guide for Judicial Officers* and *Electronic Civil Protection Order Service – Guide for Law Enforcement* in the session materials.

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## **ORDERS TO SURRENDER AND PROHIBIT WEAPONS:**

**Q: When are courts required to enter an Order to Surrender Weapons?**

A: See [RCW 9.41.800](#). Orders to Surrender Weapons are now called Orders to Surrender *and Prohibit* Weapons. This was a change requested to help respondents better understand the requirements of the court’s order. “Any court entering a protection order authorized under Chapter 7.105 RCW ... shall, upon a showing by a preponderance of the evidence, that a party has used, displayed, or threatened to use a firearm or other dangerous weapon in a felony OR is ineligible to possess a firearm under the provisions of [RCW 9.41.040](#):

- require that the party immediately surrender all firearms and other dangerous weapons;
- require that the party immediately surrender any concealed pistol license issued under [RCW 9.41.070](#);
- prohibit the party from accessing, having in his or her custody or control, possessing, purchasing, receiving, or attempting to purchase or receive, any firearms or other dangerous weapons;
- prohibit the party from obtaining or possessing a concealed pistol license; and
- other than for ex parte temporary protection orders, unless the ex parte temporary protection order was reissued after the party received noticed and had an opportunity to be heard, direct law enforcement to revoke any concealed pistol license issued to the party.”

“During any period of time that the party is subject to a protection order issued under Chapter 7.105 RCW that (a) was issued after a hearing of which the party received actual notice, and at which the party had an opportunity to participate...; (b) restrains the party from harassing, stalking, or threatening an intimate partner of the party, the protected person, or child of the intimate partner, party, or protected person, or engaging in other conduct that would place an intimate partner or protected person in reasonable fear of bodily injury to the intimate partner, protected person, or child; and (c)(i) includes a finding that the party represents a credible threat to the physical safety of the intimate partner, protected person, or child; or (c)(ii) by its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner, protected person, or child that would reasonably be expected to cause bodily injury, the court shall:

- require that the party immediately surrender all firearms and other dangerous weapons;
- require that the party immediately surrender any concealed pistol license issued under [RCW 9.41.070](#);
- prohibit the party from accessing, having in his or her custody or control, possessing, purchasing, receiving, or attempting to purchase or receive, any firearms or other dangerous weapons; and
- prohibit the party from obtaining or possessing a concealed pistol license.”

## **BURDEN OF PROOF:**

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**Q: What are the burdens of proof and specific findings that must be made at various stages – ex parte orders, full orders, orders to renew, or orders to modify/terminate?**

**A: Ex Parte Order** - See [RCW 7.105.305\(1\)](#). “Where it appears from the petition and any additional evidence that the respondent has engaged in conduct against the petitioner that serves as a basis for a protection order under this chapter, and the petitioner alleges that serious immediate harm or irreparable injury could result if an order is not issued immediately without prior notice to the respondent, the court may grant an ex parte temporary protection order, pending a full hearing.”

**Full Order** - See [RCW 7.105.225\(1\)](#) The court shall issue a protection order if it finds by a preponderance of the evidence that the petitioner has proved:

- Domestic Violence Protection Order: petitioner has been subjected to domestic violence by respondent;
- Sexual Assault Protection Order: petitioner has been subjected to nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent;
- Stalking Protection Order: petitioner has been subjected to stalking by the respondent;
- Vulnerable Adult Protection Order: petitioner has been abandoned, abused, financially exploited, or neglected, or is threatened with abandonment, abuse, financial exploitation, or neglect by the respondent;
- Extreme Risk Protection Order: respondent poses a significant danger of causing personal injury to self or others by having in the respondent’s custody or control, purchasing, possessing, accessing, receiving, or attempting to purchase or receive, a firearm; or
- Antiharassment Protection Order: petitioner has been subjected to unlawful harassment by the respondent.

**Renewal Orders, Other than Extreme Risk Protection Orders - See [RCW 7.105.405](#).**

“If the motion for renewal is uncontested and the petitioner seeks no modification of the order, the order may be renewed on the basis of the petitioner’s motion and statement of the reason for the requested renewal.”

“Petitioner bears no burden of proving the petitioner has a current reasonable fear of harm by the respondent.”

The court shall grant the motion for renewal unless the respondent proves by a preponderance of the evidence that there has been a substantial change in circumstances and:

- Domestic Violence Protection Order: respondent will not resume acts of domestic violence against the petitioner or the petitioner’s family or household members who are minors or vulnerable adults when the order expires;
- Sexual Assault Protection Order: respondent will not engage in, or attempt to engage in, physical or nonphysical contact with the petitioner when the order expires;
- Stalking Protection Order: respondent will not resume acts of stalking against the petitioner or the petitioner’s family or household members when the order expires;
- Vulnerable Adult Protection Order: respondent will not resume acts of abandonment, abuse, financial exploitation, or neglect against the vulnerable adult when the order expires; or
- Antiharassment Protection Order: respondent will not resume harassment of the petitioner when the order expires.

**Renewal Orders, Extreme Risk Protection Orders - See [RCW 7.105.410](#)**

“If the court finds by a preponderance of the evidence that the requirements for the issuance of an extreme risk protection order as provided in [RCW 7.105.215](#) continue to be met, the court shall renew the order. However, if, after notice, the motion for renewal is uncontested and the petitioner seeks no modification of the order, the order may be renewed on the basis of the petitioner's motion and statement of the reason for the requested renewal.”

**Modification/Termination of orders other than Extreme Risk Protection Orders and Vulnerable Adult Protection Orders - See [RCW 7.105.500](#)**

“Upon a motion with notice to all parties and after a hearing, the court may modify the terms of an existing protection order or terminate an existing order.”

“A respondent's motion to modify or terminate an existing protection order must include a declaration setting forth facts supporting the requested order for modification or termination. The nonmoving parties to the proceeding may file opposing declarations. All motions to modify or terminate shall be based on the written materials and evidence submitted to the court. The court shall set a hearing only if the court finds that adequate cause is established.”

“[T]he court may not modify or terminate an existing protection order unless the respondent proves by a preponderance of the evidence that there has been a substantial change in circumstances such that the respondent will not resume, engage in, or attempt to engage in, the following acts against the petitioner or those persons protected by the protection order if the order is terminated or modified:

- acts of domestic violence, in cases involving domestic violence protection orders;
- physical or nonphysical contact, in cases involving sexual assault protection orders;
- acts of stalking, in cases involving stalking protection orders; or
- acts of unlawful harassment, in cases involving antiharassment protection orders.”

“The petitioner bears no burden of proving that he or she has a current reasonable fear of harm by the respondent.”

**Termination of Extreme Risk Protection Orders - See [RCW 7.105.505](#)**

“The respondent shall have the burden of proving by a preponderance of the evidence that the respondent does not pose a significant danger of causing personal injury to self or others by having in his or her custody or control, accessing, possessing, purchasing, receiving, or attempting to purchase or receive, a firearm or other dangerous weapons.”

**Modification/Termination of Vulnerable Adult Protection Orders - See [RCW 7.105.510](#)**

“In a hearing on a motion to modify or terminate the protection order, the court shall grant such relief consistent with [RCW 7.105.310](#) as it deems necessary for the protection of the vulnerable adult, including modification or termination of the protection order.”

**DEFINITIONS:**

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Q: What is the definition of domestic violence in the protection order statute?

A: See [RCW 7.105.010\(9\)](#). "Domestic violence" means:

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

“Coercive control” means a pattern of behavior that is used to cause another to suffer physical, emotional, or psychological harm, and in purpose or effect unreasonably interferes with a person’s free will and personal liberty. In determining whether the interference is unreasonable, the court shall consider the context and impact of the pattern of behavior from the perspective of a similarly situated person.” The statute includes examples of coercive control. See [RCW 7.105.010\(4\)](#).

