

DVPO Tip Sheet

SERVICE

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.

Service by mail is permitted when i) personal service required, there have been two unsuccessful attempts, and electronic service is not possible; or ii) personal service not required and there were two unsuccessful attempts at personal or electronic service. RCW 7.105.150(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(d).

PROCEDURE

Interpreters must be provided by the court at no cost to the parties. See RCW 7.105.245, Chapters 2.42 & 2.43 RCW.

Discovery is disfavored and requires court permission. RCW 7.105.200(7); See also *Scheib v. Crosby*, 160 Wn. App. 345 (2011).

Cross examination and live testimony may be allowed only when determined necessary on a case-by-case basis. *Aiken v. Aiken*, 187 Wn.2d 491 (2017).

The court shall provide **written reasons for DVPO denials**. RCW 7.105.225(5), RCW 7.105.305(3); *Maldonado v. Maldonado*, 197 Wn. App. 779 (2017).

If Respondent asserts **privilege against self-incrimination** and requests continuance due to pending criminal proceedings, consider the **King v. Olympic Pipeline factors on the record**. RCW 7.105.200(4), RCW 7.105.400(4); *Smith v. Smith*, 404 P.3d 101 (Wn. App. 2017).

EVIDENCE

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 (2000).

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).

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).

Mutual protection orders are not permitted unless both parties plead and prove domestic violence. RCW 7.105.310(4)(b).

An Order for Protection shall be granted if the court finds DV by a **preponderance of the evidence**. RCW 7.105.225(1)(a); *In re Levias*, 83 Wn. 2d 253 (1973).

RELIEF AVAILABLE

Petitioner's children and household members entitled to full statutory protections even if no proof of direct harm. *Rodriguez v. Zavala*, 188 Wn. 2d 586 (2017).

Protections may include a **change in visitation schedules**. *Maldonado v. Maldonado*, 197 Wn. App. 779 (2017).

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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* (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 (2016).

If granted, Petitioner is entitled to DVPO for a **fixed period of one year or longer**. RCW 7.105.315; *Juarez* (2016).

The **court may not order Petitioner to file a family law case**. *Maldonado* (2017); *Juarez* (2016); *In re Marriage of Stewart*, 133 Wn. App. 545 (2006).

The court may provide **additional relief**, such as requiring the Respondent to participate in state-certified DV or sex offender perpetrator treatment; obtain a mental health or chemical dependency evaluation; transfer schools; pay administrative costs, service fees, and attorney's fees; electronic monitoring (not minors); surrender weapons; restrict abusive litigation; order financial relief; restrain transfer of jointly owned assets; restrain from possession or distribution of intimate images depicting Petitioner. RCW 7.105.310.

The court **may not order Petitioner to pay Respondent's attorneys' fees**. RCW 7.105.310(3)(b).

WEAPON SURRENDER & VIOLATIONS

The Court shall **consider an OTSW** when any temporary or full protection order is issued:

- The court when issuing an order authorized under Chapter 7.105 RCW **shall** issue an order to surrender weapons 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 order to surrender weapons 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).

The party ordered to surrender weapons has the **burden to prove compliance**, by a preponderance of the evidence. *Braatz v. Braatz*, 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).

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