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Violence in the Home:

Order for Protection

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Protection Order

Also Called

Order for Protection


Distinguished From

Protective Order - discovery

No-Contact Order - criminal

Protection Order: Categories

- Dissolution, RCW 26.09
 - Anti-Harassment, RCW 10.14
 - Domestic Violence, RCW 26.50
 - Extreme Risk, RCW 7.94
 - No-Contact Orders, criminal various statutes
 - Sexual Assault, RCW 7.90
 - Stalking Protection Orders, RCW 7.92
 - Vulnerable Adult, RCW 74.34
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Dissolution

Temporary Restraining Order (TRO)

As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary restraining order or preliminary injunction, providing relief proper in the circumstances, and restraining or enjoining any person from:

- (a)** Transferring, removing, encumbering, concealing, or in any way disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained or enjoined, requiring him or her to notify the moving party of any proposed extraordinary expenditures made after the order is issued;
- (b)** Molesting or disturbing the peace of the other party or of any child;
- (c)** Going onto the grounds of or entering the home, workplace, or school of the other party or the day care or school of any child upon a showing of the necessity therefor;
- (d)** Knowingly coming within, or knowingly remaining within, a specified distance from a specified location; and
- (e)** Removing a child from the jurisdiction of the court.



Continuing RO

In entering a decree of dissolution ... the court shall make provision for any necessary continuing restraining orders including the provisions contained in RCW 9.41.800, make provision for the issuance within this action of the restraint provisions of a domestic violence protection order under chapter 26.50 RCW or an antiharassment protection order under chapter 10.14 RCW.

RCW 26.09.050

Violation

- Gross Misdemeanor
- May impose electronic monitoring
- Shall impose fine of \$15.
- Arrest mandatory upon probable cause that restrained person violated the order

RCW 26.50.110(1)

RO v. Constitutional Rights

Free Speech

RO that restrains husband from making derogatory remarks about wife does not violate husband's free speech if "derogatory remarks" is interpreted as "defamatory remarks."

In re Marriage of Olson, 69 Wn. App. 621, 630, 850 P.2d 527, 532 (1993)

Right to Bear Arms

Continuing RO that prevents Husband from possessing firearms does not violate husband's right to bear arms.

In re Marriage of Underwood, 181 Wn. App. 608, 614, 326 P.3d 793, 796 (2014)



Anti-harrasment

Anti-Harassment: Legislative Intent

The legislature finds that serious, personal harassment through repeated invasions of a person's privacy by acts and words showing a pattern of harassment designed to coerce, intimidate, or humiliate the victim is increasing. The legislature further finds that the prevention of such harassment is an important governmental objective. This chapter is intended to provide victims with a speedy and inexpensive method of obtaining civil antiharassment protection orders preventing all further unwanted contact between the victim and the perpetrator.

RCW 10.14.010

Anti-Harassment: Definitions

Course of Conduct

Pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.

Includes electronic communication.

Does not include constitutionally protected free speech.

RCW 10.14.020

Unlawful Harassment

Knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose.

Substantial emotional distress.

Or causes parent to fear for the well-being of their child.

Anti-Harassment: Scope of Relief

Court May

No contact

No surveillance

Must stay certain distance from residence or workplace

RCW 10.14.080(6)

Court May Not

- Restrain constitutionally protected free speech
- Restrain use and enjoyment of real property
- Limit right to care/custody of minor children
- No new ex parte order if previous two attempts failed to get final order

RCW 10.14.080 (8 – 12)

Anti-Harassment: Negligent Service

Statute

Statute requires sheriff or police to serve ex parte order.

RCW 10.14.100

[Washburn v. City of Federal Way, 178 Wn. 2d 732 \(2013\)](#)

Facts

Police served respondent in presence of victim. Respondent subsequently killed victim.

Held

Police officer should have known that service of order would trigger respondent and therefore service was negligent.

Anti-Harassment v. Free Speech

Facts

Psychotherapist specializes in retrieving suppressed memories. Restrained person picketed psychotherapist's office

District Court Restraints

No photographing / videotaping
No aiding / abetting third party

[State v. Noah, 103 Wn. App. 29 \(Div. I, 2000\)](#)

Issue

Valid time/place/manner restriction

Held

Yes. Restraints specific to one person

Immigration Status v. Free Speech

Court may not restrain father from contacting any government agency about mother's immigration status per First Amendment.

Upon remand, the family court may craft a narrowly tailored order that is tied to its specific factual findings regarding Meredith's harassing and libelous behavior.

In re Marriage of Meredith, 148 Wn. App. 887, 902, 201 P.3d 1056, 1063-64 (2009)

Anti-Harassment: Legal Process

Facts

RO restrains respondent from contact with petitioner.

Petitioner sues respondent in small claims and sends demand letter

City of Seattle v. Megrey, 93 Wn. App. 391, 968 P.2d 900 (1998)

Issue

Whether demand letter violated RO.

Held

Yes. Legal process allowed. Demand letter is not legal process



Domestic Violence



Domestic Violence: RCW (Civil)

Physical harm, bodily injury, assault, sexual assault, or stalking, or the infliction of fear of imminent physical harm, bodily injury or assault, sexual assault, or stalking of one intimate partner by another intimate partner or of one family or household member by another family or household member.

RCW 26.50.010

Definition Includes Fear of Harm to Children

A person does not have to be a victim of domestic violence to be included in a protection order. RCW 26.50.060 affords trial courts substantial discretion to protect victims and their loved ones. The provision explains that a trial court may bar a respondent from going to the “day care or school of a child” or having “any contact with the victim of domestic violence or the victim's children or members of the victim's household” and that, notably, the court may order “other relief as it deems necessary for the protection of the petitioner and other family or household members sought to be protected.”

Rodriguez v. Zavala, 188 Wn.2d 586, 593, 398 P.3d 1071, 1075 (2017)



Domestic Violence: Wikipedia

Involves violence against children, parents, or the elderly. It takes a number of forms, including physical, verbal, emotional, economic, religious, reproductive, and sexual abuse, which can range from subtle, coercive forms to marital rape and to violent physical abuse such as choking, beating, female genital mutilation, and acid throwing that results in disfigurement or death.

Domestic murders include stoning, bride burning, honor killings, and dowry deaths (which sometimes involve non-cohabitating family members).

Domestic Violence: American Psychiatric Association

Intimate Partner Violence describes physical, sexual or psychological harm by a current or former partner or spouse. Approximately 1 in 4 women and 1 in 9 men in the United States have experienced rape, physical violence and/or stalking by an intimate partner in their lifetime.

Hearsay Statement of Child May Be Basis for DVPO

But the holding of *Stewart*—that imminent psychological harm to children is a proper statutory basis for a protection order—is not limited to the facts of that case. Hearsay evidence is admissible in the protection order proceedings listed in ER 1101(c)(4). There is no requirement for corroboration and no requirement that the children testify to or voice their fear to establish that violence has made them fearful.

[Maldonado v. Maldonado, 197 Wn. App. 779, 791-92, 391 P.3d 546, 553 \(2017\)](#)

Does not Include Corporal Punishment

The use of an open hand to slap a child on the face is “permissible so long as it does not cause bodily harm greater than transient pain or minor temporary marks.”

Ugolini v. Ugolini, 11 Wn. App. 2d 443, 448 (2019)

Domestic Violence: “Imminent”

Where history of domestic violence, on-going disputes over custody, and victim exhibits fear of perpetrator, recent act of domestic violence not required to renew DVPO.

Spence v. Kaminski, 103 Wn. App. 325, 331 (Div. III, 2000)

Threat to Kill Justifies DVPO

As of 7:30a.m. [sic] yesterday Awan Johnson terminated me, hung up the telephone and removed all authority I have to act on his behalf. He further will not answer the phone.

FURTHER AND PLEASE BE ADVISED, I called you several times today to warn you on behalf of your client that a conditional threat to kill was made by my former disgruntled client indicating that if he “gets screwed” which he may interpret as any restrictions on his custodial rights, he is going to “Kill Andrea [Anthony]”. He repeated this and variations, perhaps in anger[,] more than once.

In re Parentage of T.W.J., 193 Wn. App. 1, 5, 367 P.3d 607, 609 (2016)

Example of “Physical Harm”

Cortinas appeared uninvited at the McCord/Hecker house, pounded on the exterior wall, demanded that Hecker come outside, followed the family, and had been involved in a physical altercation with McCord. Cortinas told Hecker's sister that she (Cortinas) was going to shoot them both (Hecker and McCord) and then kill herself. Hecker was in fear of Cortinas, inferentially, that she would carry out her threats to kill him and McCord.

Hecker v. Cortinas, 110 Wn. App. 865, 870, 43 P.3d 50, 53 (2002)

Domestic Violence: Criminal

Any of following crimes between family member, household member, intimate partner:

- Assault
- Drive-by shooting
- Reckless endangerment
- Coercion
- Burglary
- Criminal trespass
- Malicious mischief
- Kidnapping
- Unlawful imprisonment
- Violations of a restraining order or no contact order
- Rape
- Residential burglary
- Stalking
- Interference with reporting of domestic violence

RCW 10.99.020(6)



DVPO: Duration

Restraints protecting perpetrator's children may not exceed one year.

RCW 26.50.060(2)

Restraints protecting victim may last for a year, for a longer fixed period or permanently 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.” id.

Parenting Plan v. DVPO

The tenor of RCW 26.50.025(2) directs the trial court to reject other available proceedings and remedies as an influence on the remedy granted in a **Domestic Violence** Prevention Act petition. Therefore, we hold that denying lengthy protection because of the availability of other relief or the pendency of another court proceeding runs contrary to RCW 26.50.025(2). Anna Juarez was denied the relief she sought and to which the statute declares she may be entitled. By not allowing the full one-year protection order, the trial court in essence denied partial relief. The trial court delayed the full relief requested by Anna.

Juarez v. Juarez, 195 Wn. App. 880, 888, 382 P.3d 13, 17 (2016)



Extreme Risk



Purpose

(1) Chapter 3, Laws of 2017 is designed to temporarily prevent individuals who are at high risk of harming themselves or others from accessing firearms by allowing family, household members, and police to obtain a court order when there is demonstrated evidence that the person poses a significant danger, including danger as a result of threatening or violent behavior.

Rev. Code Wash. (ARCW) § 7.94.010

Extreme Risk: Elements

Necessary Findings

Respondent poses a significant danger of causing personal injury to self or others by having in his or her custody or control, purchasing, possessing, or receiving a firearm

RCW § 7.94.040(2)

Facts

Recent act or threat of violence, whether or not involving a firearm

Pattern of acts or threats within past twelve months

Imminent threat of harm

Violation of protection order or no-contact order

Access to firearms

RCW 7.94.040(3)



Sexual Assault

Sexual Assault: Definitions

Nonconsensual: lack of freely given agreement

Sexual Conduct: intentional or knowing touching or fondling of the genitals, anus, or breasts, directly or indirectly, including through clothing

Sexual penetration: means any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person

RCW 7.90.010



Stalking Protection Orders

Stalking

Stalking conduct:

(a) Any act of stalking as defined under RCW 9A.46.110;

(b) Any act of cyberstalking as defined under RCW 9.61.260;


(c) Any course of conduct involving repeated or continuing contacts, attempts to contact, monitoring, tracking, keeping under observation, or following of another that:

(i) Would cause a reasonable person to feel intimidated, frightened, or threatened and that actually causes such a feeling;

(ii) Serves no lawful purpose; and

(iii) The stalker knows, or reasonably should know, threatens, frightens, or intimidates the person, even if the stalker did not intend to intimidate, frighten, or threaten the person.

RCW 7.92.020



Vulnerable Adult

Vulnerable Adults

A vulnerable adult, or interested person on behalf of the vulnerable adult, may seek relief from abandonment, abuse, financial exploitation, or neglect, or the threat thereof, by filing a petition for an order for protection in superior court.

RCW 74.34.110



Evidence and Process

ale Lewis III, M.S., J.D.
Attorney at Law




Protection Order: Rules of Evidence

The rules (other than with respect to privileges, the rape shield statute and ER 412) need not be applied in the following situations:

(4) *Applications for protection orders.* Protection order proceedings under Chapters 7.90, 7.92, 7.94, 10.14, 26.50, and 74.34 RCW. Provided when a judge proposes to consider information from a criminal or civil 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



Protection Order: Sounds in Equity

DVPO hearings are equitable in nature and therefore

- May be heard on documentary evidence alone
- Plaintiff may not compel evidence or testimony

Smith v. Smith, 1 Wn. App. 2d 122, 132 (Div. I, 2017)

No right to jury

Blackmon v. Blackmon, 155 Wn. App. 715, 721 (Div. II, 2010)

Jurisdiction & Venue

Where

County or municipality where petitioner resides

RCW 26.50.020(7)

What Court

- Superior, district, or municipal.
- Superior mandatory if:
 - Children involved
 - Exclusion from shared dwelling

RCW 26.50.020(6)

Process

Ex Parte hearing. Notice not required if irreparable injury could result.

Return hearing. Typically scheduled 14 days later, personal service required five days prior to return hearing.

Permanent order. Expires in one year, unless court finds that respondent is likely to resume acts of domestic violence after one year.

Protection Order:

Know Local Courts

King County: almost always on pleadings only, 5 mins/side

Island County: (trial)

- Petitioner's case in chief limited to pleadings
- Respondent goes first
- Petitioner gets rebuttal
- undisclosed evidence admissible

Tribal Court: (Tulalip and Lower Elwha S'Klallam)

- Victim has free attorney
 - All evidence and witnessed disclosed before trial
 - Respondent must personally appear
-

Prepare for the Hearing

Bring witnesses (make record if witnesses are denied)

Rules of evidence don't apply, but go to weight

Be nimble, prepared for surprises

Every court is different

Just the right amount of tears

Short, directed questions on cross



Effective Representation





Protection Order

Screen all potential clients.

- Allegations
- True
- Evidence

Protection Order:

Representing the Petitioner



Is she telling the Truth: Motive

Improper Motive

Green card

Advantage in the parenting plan dispute

Advantage in the property division

Revenge

Hush money

Proper Motive

Fear

Is She Telling the Truth: Her Story

- He was so charming when we first met / instant attraction
- Such a good father when he isn't drunk
- I don't want him to go to jail
- He promised me he would get help
- He won't let me talk to my mother
- He monitors my phone calls
- He makes me have sex in ways that make me uncomfortable
- I tried multiple times to leave
- I finally left with assistance from friend
- He lied to the police
- He is very persuasive. Nobody will believe me
- I am so afraid of him
- He accused me of looking at another guy, but I didn't
- I would never do anything to hurt him

Cycle of Violence

He beats her up

She threatens to leave

He apologizes, agrees to get help

Honeymoon phase

Tensions build

Maybe the tension is so bad, she deliberately triggers him

He beats her up again

Is She Telling the Truth (yes): Tells

- Tears
- Body shakes / tenses when he appears in the court room in person or on the phone / video
- She wants to placate him
- She worries about how any legal maneuvering will affect him and trigger his bad behavior
- She still loves him in some unhealthy way
- Doesn't want him to go to jail,
- She wants emotional / psychological support from lawyer and staff
- Fear



Is She Telling the Truth (No): Tells

- No emotional release when talking about him
- No emotional response to description of cycle of violence
- Uses domestic violence buzz words
- Sounds coached
- No details about the abuse
- Hates him
- Vindictive
- Not afraid of him
- Ulterior motive

The Declaration

- Background: how we met, length of relationship, children
- Abusive behavior grew over time
- General description of behavior
- Bill of particulars
- Copy-edited
- Formatted
- Signed, dated, penalty of perjury

Bill of Particulars

At least three incidents

The more recent the better

Bodily injury preferred

Breaking her personal property and effects

Harming pets

Verbal threats of violence

Strangulation

Acts of control and manipulation may
provide context to enhance credibility

Corroborating Evidence

Hospital records


Police records

Photos of bruises

Third-party witnesses

Texts / emails / social media from Opposing

Similar details across different sources



Note to the
Attorney: Protect
Yourself from
Secondary
Trauma

- Maintain boundaries
- Order staff to maintain boundaries
- Encourage her to get therapy
- Encourage her to see her friends/family
- You are not her therapist
- Focus on the legal / evidentiary issues
- Demand full payment
- Explain why the boundaries are to her benefit
- Feel energized by fighting the good fight

Representing the Respondent

Is *He* Telling the Truth: Tells

Yes

- I don't want to see her again
- Genuine interest in the children
- Wants fair divorce settlement
- Doesn't criticize or attack
- No name calling

No

- Wants to know what she is doing, why she is doing it, where she was, etc.
- Woe is me. I am the victim here
- Minimization/Blaming/Denial
- Angry
- Refuses to pay attorney's fees or money is not object
- Wants to crush her
- Freezes up at trial

Representing the Respondent (if he did it)

- Can we settle this?
 - What are your concerns?
 - How can I address them?
 - Beg and plead
 - Restricted access to children for a year
 - Enroll in drug and alcohol treatment
 - RO under the divorce decree, not reported to police
 - Informal RO
-

Protection Order: Representing the Respondent (If he didn't do it)

- DV assessment
- Counseling
- Counter narrative
- Exculpatory evidence
- Motive
- Alibi
- Undermine/Critique accuser's evidence

Protection Order Harms Respondent

- Can't cross the border without hassle
- Can't get security clearance
- Can't possess firearm
- Can't get / keep job that requires firearm
- Can't work with children
- Can't coach son's baseball team
- Stigmatic / reputational injury

Termination of Permanent Order (Marriage of Freeman)

Permanent Order may be terminated if restrained person proves an unlikelihood of committing future acts of domestic violence *and* where the facts do not support a current reasonable fear of imminent harm.

In re Marriage of Freeman, 169 Wn.2d 664, 674, 239 P.3d 557, 561 (2010)

Termination of Permanent Order: (Legislative Response to Marriage of Freeman)

The court may not terminate an order for protection that is permanent or issued for a fixed period exceeding two years upon a motion of the respondent unless the respondent proves by a preponderance of the evidence that there has been a substantial change in circumstances such that the respondent is not likely to resume acts of domestic violence against the petitioner or those persons protected by the protection order if the order is terminated. In a motion by the respondent for termination of an order for protection that is permanent or issued for a fixed period exceeding two years, the petitioner bears no burden of proving that he or she has a current reasonable fear of imminent harm by the respondent.

RCW 26.50.130(4) (2011)

Termination of DVPO

Parties' agreement to enter into permanent DVPO may indicate parties' acknowledgment that there was likelihood that the restrained person would resume acts of domestic violence if order were terminated.

Fowler v. Fowler, 8 Wn. App. 2d 225, 214 (Div. II, 2019)

Court need not consider the reasons the restrained person would like to terminate the DVPO.

Id.

Modification of Permanent Order

No modification unless substantial change of circumstances, i.e.:

- (i)** Whether the respondent has committed or threatened domestic violence, sexual assault, stalking, or other violent acts since the protection order was entered;
- (ii)** Whether the respondent has violated the terms of the protection order, and the time that has passed since the entry of the order;
- (iii)** Whether the respondent has exhibited suicidal ideation or attempts since the protection order was entered;
- (iv)** Whether the respondent has been convicted of criminal activity since the protection order was entered;

Modification of Permanent Order (Continued)

(v) Whether the respondent has either acknowledged responsibility for the acts of domestic violence that resulted in entry of the protection order or successfully completed domestic violence perpetrator treatment or counseling since the protection order was entered;

(vi) Whether the respondent has a continuing involvement with drug or alcohol abuse, if such abuse was a factor in the protection order;

(vii) Whether the petitioner consents to terminating the protection order, provided that consent is given voluntarily and knowingly;

(viii) Whether the respondent or petitioner has relocated to an area more distant from the other party, giving due consideration to the fact that acts of domestic violence may be committed from any distance;

(ix) Other factors relating to a substantial change in circumstances

RCW 26.50.130(3)(c)



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