

CHAPTER 8

CIVIL PROTECTION ORDERS¹

I. Purpose and Effectiveness of Protection Orders

Protection orders have emerged during the past two decades as an accessible and effective justice system response to family violence. They can play a critical role as part of a comprehensive plan designed to protect victims from continuing violence in the home. Studies show that protection orders are associated with a significant decrease in risk of violence against women by their male intimate partners.² There is a strong correlation between an increase in legal protection and support services for battered women and a decrease in the number of domestic homicides.³ Protection orders are particularly helpful when seen as part of a comprehensive approach aimed at achieving the goals of civil court intervention.

Protection orders are effective whether the parties are together or separated. Studies show that the danger of domestic abuse often increases after separation. The National Violence Against Women Survey found that married women who lived apart from their husbands were four times more likely to report that their husbands had raped, physically assaulted, and/or stalked them than were women who lived with their husbands.⁴ According to the National Institute of Justice (NIJ), in up to 75 percent of the domestic assaults reported to law enforcement agencies, the abused party is already divorced or separated from the abuser at the time of the incident.⁵ Many batterers who kill their partners do so at the time the woman is in the process of separating from her abuser.⁶

The NIJ Study found "with thousands of victims petitioning for protection orders, judges have a unique opportunity to intervene in domestic violence cases. For those victims who petition early, as violence begins to escalate, judges can structure needed protection before such crime can lead to serious injury or death."⁷

It should be noted that Chapter 26.50 has been upheld against a challenge that the statutory procedures do not provide sufficient due process. As stated by the court in *State v. Karas*, 108 Wn.2d 692, 700, 32 P. 3d. 1016 (2001):

Considering the minor curtailment of [respondent's] liberty imposed by the protection order and the significant public and governmental interest in reducing the potential for irreparable injury, the Act's provision of notice and a hearing before a neutral magistrate satisfies the inherently flexible demands of procedural due process.

This chapter is intended to assist the court in crafting effective orders and in developing effective and efficient procedures for handling domestic violence, consistent with the rights of all parties.

II. Scope of this Chapter and Terminology

A. Orders Available for the Protection of a Victim

Washington statutes provide for the issuance and enforcement of protection orders in a variety of contexts:

- CIVIL PROTECTION ORDERS ([RCW 26.50](#))
- RESTRAINING ORDERS ([RCW 26.09.060](#) and [26.09.300](#); [RCW 26.10.040](#), [26.44.063](#), [26.26.130](#))
- CRIMINAL NO-CONTACT ORDERS ([RCW 10.99](#))
- ANTI-HARASSMENT ORDERS ([RCW 10.14](#); [RCW 9A.56.050](#))
- VULNERABLE ADULT PROTECTION ORDERS ([RCW 74.34](#))
- ENFORCEMENT OF FOREIGN PROTECTION ORDERS ([RCW 26.52](#))

In recognition that domestic violence concerns can arise in a large number of other contexts, courts are also authorized to issue protection orders when addressing non-parental custody actions ([RCW 26.10](#)) and paternity actions ([RCW 26.26](#)). *See also* [RCW 26.50.025\(1\)](#), [26.09.050](#), [26.09.060](#), [26.10.040](#) and [26.10.115](#).

B. Scope of this Chapter and Cross-References

This chapter is primarily concerned with Orders of Protection issued pursuant to [RCW 26.50](#). Issues concerning the enforcement of foreign protection orders will also be discussed. [RCW 26.52](#).

Although the policy concerns addressed in this chapter apply whenever a court is issuing an order for the protection of a domestic violence victim and often apply when a court is concerned with issues of child abuse or vulnerable adult abuse, the procedural discussions herein apply only to orders initially obtained pursuant to [RCW 26.50](#).

Chapter 3, III of this manual contains a brief review of the many types of orders available to victims of domestic violence, including a chart which summarizes the significant attributes of the various types of orders.

Criminal No-Contact Orders are discussed in detail in Chapter 4, III.

C. Terminology: Ex Parte and Final Orders

[RCW 26.50](#) provides for the issuance of two types of orders.

[RCW 26.50.070](#) provides for the issuance of an “ex parte temporary order of protection” upon a showing of “irreparable injury.” Prior versions of this *Manual* referred to these orders as temporary restraining orders (TROs). Because the distinguishing characteristics of these orders are not their temporary nature, but the fact that they may be issued ex parte, they will be referred to throughout this chapter as “ex parte orders.”

[RCW 26.50.060](#) provides for the issuance of an order “upon notice and after hearing.” These orders have occasionally been referred to as “permanent orders.” This is a misnomer. If the order does not restrain the respondent from contacting his or her own child and if the court determines that the respondent is likely to resume acts of domestic violence when the order expires, the court may issue a long-term order with a specified expiration date. In other situations, the order is issued for no more than one year. Orders issued following notice and hearing will be referred to in this *Manual* as “final orders.”

III. Standard Forms

A. Statutory Authority

[RCW 26.50.035](#) directs the Administrator for the Courts to develop standard petition and orders of protection forms and instructional brochures to be available in all court clerk offices. *See* court forms at: <http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=16>.

B. Use of Mandatory Forms Ensures that the Orders Will Be Enforceable

All courts should use the approved Washington State forms as those forms have been drafted to meet all state and federal requirements regarding domestic violence cases. The Order for Protection, WPF DV 3.015, is a mandatory form. Law enforcement officers, judicial and criminal information gathering agencies, and other courts are familiar with and rely upon those forms.

If the court uses orders prepared by an attorney, attach and incorporate by reference the mandatory court form to make sure that the order contains

all necessary language, including in a conspicuous location notice of the criminal penalties resulting from violation of the order, and the following statement:

You can be arrested even if the person or persons who obtained the order invite or allow you to violate the order's prohibitions. The respondent has the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order upon written application.

[RCW 26.50.035\(1\)\(c\).](#)

NOTE: A protection order that does not contain this language is legally insufficient. Violation of the restraint provisions of such an order cannot be enforced through criminal proceedings. *See State v. Marking*, 100 Wn. App. 506, 997 P.2d 461, *review denied*, 141 Wn.2d 1026 (2000) (statutory language not contained in criminal no-contact order).

C. Listing of Current Forms⁸

1. DVSTMT Statement (2000)
2. WPF DV 1.015 Petition for an Order of Protection (All Cases) (2006)
3. WPF DV 1.030 Child Custody Information Sheet (2001)
4. WPF DV 1.040 Law Enforcement Information Sheet (2006)
5. WPF DV 1.050 Foreign Protection Order Information (2001)
6. WPF DV 1.060 Confidential Information Form (2006)
7. WPF DV 1.061 Addendum to Confidential Information Form (2006)
8. WPF DV 2.015 Temporary Order for Protection and Notice of Hearing (All Cases) (2006)
9. WPF DV 3.015 Order for Protection (All Cases) (2006)
10. WPF DV 3.030 Judgment (2001)
11. WPF DV 4.020 Return of Service (2002)
12. WPF DV 4.030 Petition for Surrender of Weapon, Notice of Hearing and Order (2000)
13. WPF DV 4.040 Order to Surrender Weapon (2000)
14. WPF DV 5.010 Reissuance of Temporary Order for Protection and Notice of Hearing (2000)
15. WPF DV 5.020 Order Transferring Domestic Violence Case and Setting Hearing (2000)
16. WPF DV 5.030 Petition for Renewal of Order for Protection and Notice of Hearing (2000)
17. WPF DV 5.035 Ex Parte Temporary Order for Renewal of Order for Protection and Notice of Hearing (2002)
18. WPF DV 5.040 Order for Renewal of Order for Protection (2002)

- 19. WPF DV 6.020 Denial/Dismissal Order (2006)
- 20. WPF DV 6.030 Order Realigning Parties and Notice of Hearing (2000)
- 21. WPF DV 7.010 Application to Terminate or Modify Temporary Order for Protection (2002)
- 22. WPF DV 7.020 Notice of Hearing (2000)
- 23. WPF DV 7.030 Order/Terminating/Modifying Temporary Order for Protection (2002)
- 24. WPF DV 9.010 Declaration for Service of Summons by Publication (2000)
- 25. WPF DV 9.020 Order for Service of Summons by Publication (2000)
- 26. WPF DV 9.030 Summons by Publication (2000)
- 27. WPF DV 9.040 Proof of Mailing (2002)

For all Cases:

- 28. Cover Sheet Case Information Cover Sheet

IV. Filing Deadlines – Statute of Limitations

Washington law places no limitation on the time within which an abused party must file for a protection order.

In *Spence v. Kaminski*, 103 Wn. App. 325, 12 P.3d 1030 (2000), the Court of Appeals upheld the issuance of a protection order where the petitioner did not allege a recent overt act of domestic violence. The petitioner, who had been victimized by the respondent for a period of years, was granted the order based on her current fears, even though most of the overt acts of domestic violence occurred five years before the filing of the petition.

V. Grounds for Issuance of a Domestic Violence Protection Order

A. RCW 26.50.010(1) Defines “Domestic Violence” As:

- a. Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members;
- b. Sexual assault of one family or household member by another; or

- c. Stalking . . . of one family or household member by another family or household member. [RCW 26.50.010\(1\)](#) .
“Stalking” is defined in [RCW 9A.46.110](#) and includes harassment and following the other person. The stalking statute also refers to the definition of harassment in [RCW 10.14.020](#).

NOTE: A final order of protection can be issued *without* a showing of a recent overt act of domestic violence, so long as the victim, based on prior acts of domestic violence, remains in fear of the respondent. In contrast, an ex parte order cannot be issued unless there is a danger of “irreparable injury” to the petitioner – which generally will require a recent act.
Spence v. Kaminski, 103 Wn. App. 325, 12 P.3d 1030 (2000).

B. Comparison of [RCW 26.50.010\(1\)](#) Definition with Definition of “Domestic Violence” Contained in [RCW 10.99.010](#)

[RCW 26.50](#) is a behavior-based definition. That is, it defines certain behaviors as domestic violence when they occur between family or household members. In contrast, [RCW 10.99.020\(3\)](#) includes a non-exclusive list of crimes, which are “domestic violence” when “committed by one family or household member against another.” Significantly, [RCW 10.99.020\(3\)](#) includes prosecutions for acts of malicious mischief, criminal trespass, and burglary which, depending on the specific facts of the incident, might not permit issuance of a protection order under [RCW 26.50](#).

C. Chart Showing Grounds for Issuance of Protection Orders

Grounds	Applicable Statutes Granting Authority to Issue Orders
Physical harm, bodily injury	RCW 26.50.010(1)
Assault, including sexual assault	RCW 26.50.010(1)
Infliction of fear of imminent physical harm, bodily injury or assault	RCW 26.50.010(1)
Stalking	RCWs 9A.46.010 , 10.14.020 , and 26.50.010(1)

VI. Who May Seek a Protection Order

A. “Family or Household Members” May Apply for Protection Order

1. The statute defines family or household members as:

[S]pouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren. [RCW 26.50.010\(2\)](#).

2. “Dating relationship” in the context of the statute means:

[A] social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) the length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties. [RCW 26.50.010\(3\)](#) .

3. Gay or lesbian issues

The protections provided by [RCW 26.50](#) apply equally to those in a gay or lesbian relationship. Nothing in the definition of “family or household member” limits [RCW 26.50](#) to those in a heterosexual relationship.

For additional information on same-gender domestic violence, see Appendix D for “Domestic Violence in the Lesbian, Gay, Bisexual, and Transgender (LGBT) Community” (National Center for State Courts, 2005).

B. Petitions for and by Minors

1. A person may petition the court for a protection order on behalf of a minor family or household member.

2. A person over 16 and under 18 years of age may petition for a protection order on his or her own behalf without appointment of a guardian or next friend. The court need not appoint a guardian or guardian ad litem on behalf of a respondent who is over 16 but under 18 years of age. [RCW 26.50.020\(2\) and \(3\)](#).
3. The court in its discretion may appoint a guardian ad litem for a petitioner or respondent. [RCW 26.50.020\(4\)](#).
4. A guardian ad litem is required for a petitioner who is under the age of 16.

C. Protection Order on Behalf of a “Vulnerable Adult”

A petition under [RCW 74.34](#) may be brought not only by the “vulnerable adult” but where necessary by family members, a guardian, and/or a legal fiduciary. [RCW 74.34.210](#).

The Department of Social and Health Services (DSHS) may also file a protection order on behalf of a “vulnerable adult” if they have the consent of the person to be protected. [RCW 26.50.021](#); [RCW 74.34.150](#).

VII. Jurisdiction and Venue

A. Level of Court that Can Issue the Protection Order

1. Ex parte orders

Any Washington State court (district, municipal, or superior) may issue an order pursuant to [RCW 26.50.070](#). [RCW 26.50.020\(5\)](#).

2. Final orders

Superior courts and courts of limited jurisdiction have concurrent jurisdiction to issue protection orders in most situations. However, a final order cannot be issued by a court of limited jurisdiction when:

- a. A superior court has exercised or is exercising jurisdiction over a proceeding under [RCW 26](#) or [RCW 13.34](#) involving the parties; or
- b. The petition for relief presents issues of residential schedule of and contact with children of the parties; or

- c. The petition for relief under [RCW 26.50](#) requests the court to exclude a party from the dwelling which the parties share.

[RCW 26.50.020\(5\)](#).

Many district and municipal courts routinely forward requests for final protection orders to Superior Court when the parties have children together. Even if the protection order does not directly address the minor children, an order barring contact between the adults may make compliance with the parenting plan impractical, (e.g., the arrangements for exchange of the children may need to be adjusted).

3. Authority of superior court commissioners to issue final protection orders:

A court commissioner appointed pursuant to WA Const. Art IV Sec. 23 has the authority to enter final protection orders, even though such authority is not specifically granted by RCW 2.24.040. *State v. Karas*, 108 Wn. App. 692, 32 P.3d 1016 (2001). See also RCW 26.12.060(6) (Family law commissioners have the power to “cause the orders and findings of the family court to be entered in the same manner as orders and findings are entered in cases in the superior court.”)

B. Venue

1. Venue lies in the county or in the municipality where the petitioner resides unless the petitioner has left the residence or household to avoid abuse, in which case the action may be commenced in the county or municipality of either the previous or the new household or residence. [RCW 26.50.020\(6\)](#).
2. A person’s right to petition for relief under the Domestic Violence Protection Act is not affected by the person leaving the residence or household to avoid abuse. [RCW 26.50.020\(7\)](#).

C. Interaction with Jurisdictional and Venue Provisions Concerning Children (Parenting Plans)

Even if a particular county or state has jurisdiction to enter a protection order, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) ([RCW 26.27](#)) or venue provisions may require that parenting plan issues be litigated in another forum. In such cases, the court may either defer all parenting issues to the appropriate forum or if it determines that the victim and/or children will be inadequately protected as a result may consider exercising emergency jurisdiction until the appropriate forum determines whether it will exercise jurisdiction. See [RCW 26.27.231](#) (new section 2001).

Regardless of a court's jurisdiction to adjudicate parenting plan issues, the adult victim is still entitled to seek a "permanent" protection order concerning her own person if she otherwise satisfies the requirements.

D. Personal Jurisdiction

1. Personal jurisdiction over the domestic violence perpetrator is based on the fact that an act was committed which caused a tortious injury in the state. [RCW 4.28.185\(1\)\(b\)](#). Jurisdiction is in any state where any part of the act occurred, whether or not any of the parties actually reside in the state where the act was committed.
 - a. Washington law provides for obtaining jurisdiction over a non-resident using the state's long arm statute. [RCW 4.28.185](#).
 - b. Foreign protection orders are valid and entitled to recognition if the issuing court had jurisdiction over the parties and matter under the law of the state, territory, possession, tribe, or United States military tribunal. There is a presumption in favor of validity, where an order appears authentic on its face. [RCW 26.52.020](#).
 - c. A person who resides within the state, even if on a federal enclave, is still subject to the jurisdiction of a Washington court. *See, e.g., Tammy S. v. Albert S.* 408 N.Y.S.2d 716 (1978) (court has jurisdiction over the residents although they lived in a federally owned installation); *Cobb v. Cobb*, 545 N.E.2d 1161 (Mass. 1989) (wife's status as a member of Armed Forces residing and working at a military installation in an area ceded to the federal government did not preclude the issuance of an abuse protection order).

Further, protection order was effective in the ceded area, absent any indication that order interfered with federal function); *Anthony T. v. Anthony J.*, 510 N.Y.S.2d 810 (1986) (no personal jurisdiction over defendant when service cannot be accomplished out of state using the state's long arm statute).

2. When the acts underlying the family violence offense occurred outside of the state, jurisdiction over the perpetrator may be obtained if the perpetrator has minimum contacts with the state. Reported case law is sparse on this issue but includes the following cases:

Pierson v. Pierson, 555 N.Y.S.2d 227 (1990) (perpetrator personally served in New York; family court had subject matter jurisdiction over family offense proceeding notwithstanding fact that all incidents occurred outside New York. Return to, presence, and service in New York satisfied "minimal contacts" requirement; had appellant remained in Florida, risk of continued family violence would have dissipated).

M.P. v. M.S. , 715 N.Y.S.2d 831 (2000) (New York may have jurisdiction over non-resident even though threats occurred outside of New York, if nonresident travels to New York from time to time to conduct business and New York resident is fearful of his conduct).

Hughs on Behalf of Praul v. Cole, 572 N.W.2d 747 (Minn. 1997) (Minnesota has jurisdiction over non-resident father even where threats to non-resident father's child occur outside of state, where child lives in Minnesota, father has telephone contact with child, and child suffers resulting emotional distress); *see also Civil Procedure – Orders for Child Protection*, 25 WM. MITCHELL L. REV. 965 (1999) (analyzing *Hughs* decision).

VIII. Filing Fees

No fees for filing may be charged to a petitioner seeking relief under [Chapter 26.50 RCW](#). Petitioners shall be provided with the necessary number of certified copies at no cost. [RCW 26.50.040](#). However, service fees can be collected from respondents. [RCW 26.50.060\(1\)\(g\)](#), [26.50.090\(7\)](#).

IX. Service of Process and Service of Protection Orders

A. Service of Process

1. Ex parte orders

By their nature, a hearing on a petition for an ex parte order does not require that the respondent have been served with notice of the hearing. [RCW 26.50.080](#).

2. Final orders

- a. Personal Service shall be made upon the respondent “not less than five days prior to the hearing.” [RCW 26.50.020](#). If an ex parte order has been issued, the respondent shall be served with a copy of the ex parte order, and a copy of the petition and notice of date set for hearing on the final order. [RCW 26.50.070](#).

- b. If timely personal service cannot be accomplished, the court may:

- (i) Continue the hearing for further attempts at personal service; and
 - (ii) If the court concludes, that the respondent is concealing himself to avoid personal service, it may:
 - Allow service by publication as provided in [RCW 26.50.085](#).
 - Allow service by mail as provided in [RCW 26.50.123](#), if the court determines that the circumstances justifying publication exist and the service by mail is as likely to give actual notice to the respondent as would publication.

- c. If timely personal service cannot be accomplished, the court may re-issue the ex parte order for an additional 14-day period. If the court determines that service by publication or mailing is appropriate, the ex parte order may be re-issued for a 24-day period. [RCW 26.50.085](#), [26.50.123](#).

B. Service Period of the Order

1. Ex parte order

Personal service of the order (along with a copy of the petition for final order and notice of hearing date) is required, unless the court authorizes service by publication or mailing. [RCW 26.50.070\(4\)](#).

2. Service of final order

Personal service is required unless the order recites that the respondent appeared in person before the court or unless the court authorizes service by publication or mailing.

C. No Service Fees for Personal Service

The sheriff of the county or the peace officers of the municipality in which the respondent resides shall serve the respondent and is required to effectuate personal service *at no cost* to the petitioner unless the petitioner elects to have a private party effect service. [RCW 26.50.040](#); [RCW 26.50.090\(2\)](#).

D. Cost of Service by Mail or Publication

Petitioner is responsible to pay the cost of publication or mailing unless the county legislative authority allocates funds for service for indigent petitioners. [RCW 26.50.125](#).

X. Relief Available

The National Institute of Justice (NIJ) found that civil protection orders, when properly drafted and enforced, are effective in eliminating or reducing domestic abuse. Their utility **may depend on whether they provide the requested relief in specific detail.**⁹ Each type of relief provided must be fully explained in the order. Providing precise conditions of relief makes the offender aware of the specific behavior prohibited. A **high degree of specificity** also makes it easier for police officers and other judges to determine later whether the respondent has violated the order.¹⁰ (*Emphasis added.*)

A. Relief Available in a Final Order after Full Hearing

[RCW 26.50.060\(1\)](#) enumerates specific provisions for relief, which may be granted by the court in both ex parte and final orders.

1. Restrain the respondent from committing acts of domestic violence.
2. Exclude the respondent from the dwelling, that the parties share, from the residence, workplace, or school of the petitioner, or from the daycare or school of a child.
3. Prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location.
4. On the same basis as is provided in [Chapter 26.09 RCW](#), the court shall make residential provisions with regard to minor children of the parties. However, parenting plans as specified in [Chapter 26.09 RCW](#) shall not be required.
 - a. Duration of Order Regarding Custody of Children: [RCW 26.50.060\(2\)](#) provides that if the order prohibits a respondent from contacting his own child, the “restraint shall be for a fixed period, not exceeding one year.” This limitation does not apply for orders issued under [Chapters 26.09, 26.10 or 26.26 RCW](#). The order may be renewed.
 - b. Order supervised visitation for the respondent with the minor children of the parties. The supervision to be performed by professionals or someone known to the parties.
 - c. Effect on existing parenting plan or child support order: Although a court may make initial determinations of custody in a protection order proceeding, a protection order may not be used to effectuate a *permanent* modification of an existing parenting plan or other previously-entered court order. *In re Marriage of Barone*, 100 Wn. App. 241, 247, 996 P.2d 654 (2000). Thus, in *Barone*, the placement of the children with the mother in a protection order proceeding did not relieve her of a prior obligation to pay child support. *See also In re Marriage of Stewart*, 135 Wn. App. 535, 137 P.3d 25 (2006) (Provision of a domestic violence protection order that prohibited father from having any contact with children until further action in family

court was not an impermissible *de facto* modification of the parenting plan).

- d. If the court believes it appropriate to enter a protection order that will have the effect of changing residential placement of the children or making a significant change to the residential schedule, the court may exercise its emergency jurisdiction to do so but should set up a process to avoid the protection order becoming a *de facto* permanent modification. One way is to require the moving party to file a parenting plan modification and provide that the provisions of the protection order concerning custody will expire automatically in 120 days unless renewed by further court order.
5. Order a respondent to participate in a domestic violence perpetrator treatment program approved under [RCW 26.50.150](#), or participate in testing, evaluation and/or treatment for substance abuse.
6. Order other relief necessary for protection of the petitioner and other family or household members sought to be protected. Order a peace officer to assist. [Although law enforcement can be ordered to provide a civil stand-by to allow the petitioner to recover her home, personal effects, or children, they may limit the time they will standby to recover personal effects. Other arrangements should be made for recovering large amounts of property.]
7. Require respondent to pay the administrative court costs and service fees, as established by the county, and to reimburse petitioner for costs incurred in bringing the action and attorney fees.

NOTE: No filing fees or service fees are collected from the petitioner.

8. Restrain a party from having any contact with the victim . . . or the victim's children or members of the victim's household. If the victim's children are also the respondent's children, this restraint shall not exceed one year (but the victim may apply for renewal).

NOTE: A protection order need not prohibit all contact. The court has discretion to craft an order appropriate to the circumstances. *See State v DeJarlais*, 136 Wn.2d 939, 969 P.2d 90

- (1998) (protection order may allow some contact, such as by telephone; no requirement that all contact be prohibited. Order still enforceable.)
9. Require a respondent to submit to electronic monitoring.
 10. Consider the provisions of [RCW 9.41.800](#), regarding the surrender of weapons. [If the court finds that possession of a dangerous weapon presents a serious and imminent threat to the health or safety of an individual, the court may order the respondent to surrender the weapon and any concealed pistol permit and prohibit the respondent from obtaining or possessing a weapon. [RCW 9.41.800\(4\)](#).] See Chapter 3, II for further discussion.
 11. Order possession and use of essential personal effects. The court shall list the essential personal effects with sufficient specificity. [Essential personal effects means those items necessary for a person's immediate health, welfare and livelihood and includes, but is not limited to, clothing, cribs, bedding, documents, medications and personal hygiene items. [RCW 26.50.010\(7\)](#).]
 12. Order use of a vehicle. [RCW 26.50.060\(1\)](#).

NOTE: Some members of law enforcement urge caution in awarding use of a vehicle titled solely in the abuser's name. If the vehicle is reported stolen, the victim may be subjected to a felony stop.

B. Relief Available in Ex Parte Order

1. [RCW 26.50.070\(1\)](#) enumerates the provisions available for relief in an ex parte proceeding where the court has concluded that [I]rreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent ... including an order:
 - a. Restraining any party from committing acts of domestic violence;
 - b. Restraining any party from going onto the grounds of or entering the dwelling that the parties share, from the residence, workplace, or school of the other, or from the day care or school of a child until further order of the court;

- c. Prohibiting any party from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;
- d. Restraining any party from interfering with the other's custody of the minor children or from removing the children from the jurisdiction of the court;
- e. Restraining any party from having any contact with the victim of domestic violence or the victim's children or members of the victim's household; and
- f. Considering the provisions of [RCW 9.41.800](#).

[RCW 26.50.070\(1\)\(a\)-\(f\)](#).

C. Use of “Catch-All” Provision to Provide Additional Relief

Both [RCW 26.50.060](#) and [RCW 26.50.070](#) contain general provisions authorizing other relief needed to protect the victim. As indicated in [RCW 26.50.060\(1\)\(f\)](#), the court is authorized to order relief that is “necessary for the protection of the petitioner and other family or household members.” [RCW 26.50.070\(1\)](#) provides that the court may “grant relief as the court deems proper” including the specific provisions outlined above.

A court, in issuing a protection order, has substantial discretion in crafting provisions that will fully protect the petitioner and her family and household members. For instance, the court may, in a given case, deem it appropriate to order the respondent to relinquish control of the petitioner’s pet or, where there is a specific concern that the respondent might destroy petitioner’s property, order the respondent to maintain petitioner’s property in good condition or to turn it over to the petitioner, even when such property is not an “essential personal effect.” Or, if a victim is in hiding, the court might issue an order prohibiting the respondent from making attempts to find her.

Thus, in *Dickson v. Dickson*, 12 Wn. App. 183, 529 P.2d 476 (1974), a case involving an injunction issued in a dissolution proceeding, but presenting issues common in the protection order context, the court upheld a provision prohibiting further harassment. Among other things, the ex-husband was enjoined from accusing the ex-wife of being insane, from cursing her, from writing her letters, and from representing that the two were still married. The case held that the injunction did not violate the ex-husband’s first amendment rights. “[T]he First Amendment is not absolute . . . The thrust of the injunction is the protection of [the] minor

children . . . There was sufficient evidence that [the ex-husband's] conduct interfered with the welfare of his minor children.” *Dickson* at 188-89.

The court did, however, order that the injunction terminate upon the youngest child reaching majority and required that the phrase “from representing [the ex-wife] as his wife” be modified to reflect that the ex-husband was entitled to contend that according to the tenets of his religion the two were still married. *Dickson* at 191.

Although broad, this discretion is not unlimited. For example, a judge cannot effectuate a *permanent* modification of a parenting plan or support obligation through use of a protection order. *In re the Marriage of Barone*, 100 Wn. App. 241, 247, 996 P.2d 654 (2000).

See also State v. Ancira, 107 Wn. App. 650, 27 P.3d 1246 (2001) (Provision in a criminal no-contact barring the defendant from having any contact with his children violate defendant’s fundamental right to parent, under facts presented in that case.)

D. Provisions Directed to Law Enforcement Officers

Law enforcement can be ordered to:

1. Serve notices of hearing and orders;
2. Assist in the removal of the perpetrator’s weapons;
3. Assist with vacate orders. This can include accompanying the abused party to the residence, serving the respondent, ensuring that respondent takes clothing, obtaining all keys to the home from the respondent, giving them to the petitioner, and standing by while the respondent leaves;
4. Assist with retrieval of property by accompanying the party retrieving belongings and standing by while the items listed in the order are retrieved. This may include use of a vehicle. The order needs to be specific, since police officers will generally not resolve disputes over items not listed in the order. Some law enforcement agencies will place a short time limit on how long they will stand by. If there is extensive property, it may be necessary to make other arrangements; and
5. Assist in recovery of children, although a writ of habeas corpus is necessary if the respondent is uncooperative.

E. Checklist of Relief Available

RELIEF AVAILABLE	STATUTORY AUTHORITY
NO FURTHER ABUSE <ul style="list-style-type: none"> • to petitioner • to children • to other household members 	RCW 26.50.060(1)(a) RCW 26.50.070(1)(a)
STAY AWAY PROVISIONS <ul style="list-style-type: none"> • from residence • from school, daycare, work place • from other specified location 	RCW 26.50.060(1)(b) and (c) RCW 26.50.070(1)(b) and (c)
NO-CONTACT ORDERS <ul style="list-style-type: none"> • with petitioner • with the children • with other household members • by third parties acting on behalf of respondent 	RCW 26.50.060(1)(f) and (h) RCW 26.50.070(1)(e)
ORDERS TO VACATE <ul style="list-style-type: none"> • not re-enter • surrender keys • not damage premises or petitioner's property • not shut off utilities or discontinue mail delivery 	RCW 26.50.060(1)(b) RCW 26.50.070(1)(b)
ORDERS CONCERNING WEAPONS	RCW 9.41.800 RCW 26.50.060(1)(j) RCW 26.50.070(1)(f)
ORDERS FOR ABUSER TO OBTAIN TREATMENT <ul style="list-style-type: none"> • batterer's counseling • substance abuse treatment and testing 	RCW 26.50.060(1)(e)
ORDERS CONCERNING CUSTODY	RCW 26.50.060(1)(d) RCW 26.50.070(1)(d)
ORDERS FOR POLICE ASSISTANCE <ul style="list-style-type: none"> • serve notice • arrest for violations • remove weapons • assist with vacate orders • civil standby procedure 	RCW 26.50.060(1)(f) RCW 26.50.080
ORDER RESPONDENT TO PAY ATTORNEY FEE	RCW 26.50.060(1)(g)
ORDER RESPONDENT TO SUBMIT TO ELECTRONIC MONITORING	RCW 26.50.060(1)(i)
ORDER POSSESSION OF ESSENTIAL PERSONAL EFFECTS	RCW 26.50.060(1)(k)
ORDER USE OF VEHICLE	RCW 26.50.060(1)(l)

XI. Special Issues Regarding Ex Parte Orders

A. Authority to Issue Temporary Protection Order (TPO) Ex Parte

[RCW 26.50.070\(1\)](#) provides: “Where an application . . . alleges that irreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent, the court may grant an ex parte temporary order for protection, pending a full hearing...”

B. Factors in Determining “Irreparable Injury”

[RCW 26.50.070\(2\)](#) states: “Irreparable injury under this section includes but is not limited to situations in which the respondent has recently threatened petitioner with bodily injury or has engaged in acts of domestic violence against the petitioner.”

Other considerations include:

1. History of violence
2. Petitioner’s injuries
3. Respondent’s access to weapons
4. Threats to attack or abduct the children
5. Threats or attacks on family or household members
6. Drug and alcohol abuse
7. History of mental disorder
8. Threats of suicide¹¹
9. History of sexual deviancy/convictions for sexual crimes

C. Telephonic Emergency Protection Orders

Emergency ex parte hearings may be held by telephone.

[RCW 26.50.070\(3\)](#).

D. Timing of Hearing

The court must hold an ex parte hearing on a protection order petition in person or by telephone on the day the petition is filed or the next judicial day. [RCW 26.50.070\(3\)](#).

E. Recording Abused Party's Injuries

Where possible, the judge should record information regarding the petitioner's visible injuries in written findings on the petition or temporary order. Recording this information becomes important for use in the subsequent hearing on the permanent civil protection order since by that time the evidence of these injuries may have healed.¹²

XII. Duration of Order

A. Ex Parte Orders

An order issued pursuant to [RCW 26.50.070](#) is effective for a "fixed period not to exceed fourteen days or twenty-four days if the court has permitted service by publication . . ." [RCW 26.50.070\(4\)](#). Reissuance is permitted.

B. Final Orders

1. Provisions involving the respondent's children.

"If a protection order restrains the respondent from contacting the respondent's minor children the restraint shall be for a fixed period not to exceed one year." The one-year period does not apply to orders for protection issued under [Chapter 26.09](#), [26.10](#), or [26.26 RCW](#). [RCW 26.50.060\(2\)](#).

NOTE: The court is required to advise the petitioner that if the petitioner wishes to "continue protection for a period beyond one year," the petitioner may either seek renewal of the protection order or may seek relief pursuant to [Chapter 26.09](#) or [26.26 RCW](#). [RCW 26.50.060\(2\)](#).

2. Provisions not affecting the respondent's minor children.

If a respondent is not restrained from contacting respondent's children, the court may enter an order for either a fixed period of time or may enter a permanent order of protection 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 . . ." [RCW 26.50.060\(2\)](#).

3. Practical considerations

As a practical matter, law enforcement requires a determinate expiration date, i.e., September 21, 2007, in order to properly enter and track the orders in the law enforcement computer databases.

NOTE: Revised, mandatory Protection Order Forms were distributed to the courts in June 2005. The new form requires an expiration date on the first page. [WPF DV3.015](#).

C. Ambiguity as to Expiration Date

An order ambiguous as to expiration date will be construed in favor of the person restrained. *Seattle v. Edwards*, 87 Wn. App. 305, 941 P.2d 697 (1997).

XIII. Findings Required if Protection Order Not Granted

Under both [RCW 26.50.070\(6\)](#) (ex parte orders) and [RCW 26.50.060\(7\)](#) (final orders), the court is required to make written findings explaining why the order was not granted.

XIV. Evidentiary Issues

A. Rules of Evidence Need Not Be Applied to Protection Order Hearings

In response to a request by the Superior Court and District Court Judges' Associations, the Supreme Court amended the Rules of Evidence (ER) to make them permissive rather than mandatory in all protection order proceedings under [RCW 26.50](#) or [RCW 10.14](#).¹³

[ER 1101\(c\)\(4\)](#), which was adopted in 1999, provides that the Rules of Evidence, except for the rules and statutes concerning privileges, need not be applied during hearings for protection or anti-harassment orders. *See Gourley v. Gourley*, 158 Wn.2d. 460, 145 P.3d 11835 (2006) (Recognizing that [ER 1101\(c\)\(4\)](#) permits the admission of hearsay in hearings for protection orders).

In Gourley, the court concluded that there was no due process violation in not requiring testimony or cross-examination at the hearing for protection order, but stated that such might be "appropriate in other cases."

However, if a protection order is being requested as part of another type of proceeding, i.e., a dissolution action, it may be appropriate to apply the rules of evidence in making any final orders. The rationale for not mandating application of the rules of evidence in protection order hearings was to further public policy in creating a simple, pro se friendly procedure. However, when the parties are afforded a full trial with sufficient time to call witnesses and engage in discovery, such as a dissolution trial, the rationales for dispensing with the rules of evidence are far less persuasive.¹⁴

B. Use of Information in the Domestic Violence Database

The court is required to give notice and an opportunity to be heard with regards to any information it intends to consider from the domestic violence database.

When a judge proposes to consider information from a domestic violence 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\(c\)\(4\)](#).

This does not need to be an elaborate process; nor does the court need to disclose information irrelevant to its decision-making process. *The court should take care not to disclose information that may compromise the victims' safety, such as an address.* (*Emphasis added*). The colloquy might proceed something as follows: "Our court records indicate, Mr. Jones, that you have a conviction for 4th degree assault against Ms. Jones? What would you like to say about that?" Should they dispute the information, the hearing can be continued until the file can be ordered or a certified copy of the record obtained.

XV. Conducting the Hearing

In addition to the normal concerns that judges should have that the process appear fair and accessible to the parties, there are special concerns when domestic violence victims must appear in the same courtroom as their abuser, particularly when they may be appearing pro se.

The courtroom should be set up to ensure the parties and their witnesses do not have to have direct contact with the other party and his or her witnesses and that the parties are sufficiently kept separate so that one party is not able to talk or signal to the other party before or after the hearing. A support person should be allowed to stand with a party before the bench to provide physical separation between the parties and some sense of security.

A. Non-English Speaking Parties and Recent Immigrants

1. Non-English speaking parties and those who have recently arrived in this country present special concerns regarding representation, as they may not understand court procedures due to language or cultural barriers. This may result in their inability to articulate their needs and relevant facts.
2. The Administrative Office of the Courts has translated the Petition for Order for Protection, the Temporary Order for Protection, and Notice of Hearing and the Order for Protection instructions into languages spoken by the significant non-English speaking populations: Spanish, Russian, Cambodian, Vietnamese, Laotian, Korean, and Chinese. The instructions include a model form. An update of the informational brochure, and other translations, are pending. Copies of the translated instructions are available on paper and electronically in a PDF format. The PDF versions are posted on the Washington Courts Internet site.¹⁵
3. An interpreter shall be appointed for any party who (a) cannot readily speak or understand the English language or (b) cannot readily understand or communicate in spoken language due to a hearing or speech impairment. [RCW 26.50.055\(1\)](#).

B. Consolidation of Actions

1. If a party files an action under [Chapter 26.09](#), [26.10](#), or [26.26 RCW](#), an order issued previously under [Chapter 26.50 RCW](#) may be consolidated under the new action. [RCW 26.50.025\(2\)](#).
2. Some courts have found it useful in some cases to consolidate or direct the court clerk to link all protection order and family law cases involving the same parties. In other instances, the Domestic Violence Database may be adequate for ascertaining relevant information such as the existence of other protection or criminal no-contact orders, custody or parenting plan orders and any criminal actions involving domestic violence.

The standard Petition for an Order of Protection (DV-1.010 and DV-1.020) directs the petitioner to disclose any pending actions and [RCW 26.50.030\(1\)](#) requires the parties to disclose any other litigation concerning the children of the parties. However, [RCW 26.50.030\(2\)](#) expressly provides that “[a] petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties . . .”

C. Conflicting Court Orders

1. To assist the courts in avoiding conflicting orders, the Judicial Information System includes a database containing relevant information and has been available to the courts since July 1, 1997. [RCW 26.50.160](#). Legislation further provides that courts shall consult with the Judicial Information System, if available, prior to granting an order directing residential placement of a child or restraining/limiting a party’s contact with the child. [RCW 26.50.135\(1\)](#). A more detailed discussion of the scope of the Domestic Violence Database is contained in Chapter 9.
2. Nothing in Washington statutes prohibits a petitioner from seeking civil protection relief because the petitioner is protected under an order entered in a criminal proceeding under [Chapter 10.99 RCW](#).
3. When conflicting orders are issued involving the same parties, which court order controls will depend on a number of variables including which case is being heard first, what laws are applied to each specific case, and the statutory purpose of the competing orders in light of the domestic violence statutes.

D. Agreed Orders and Mediation

See also discussion of mediation in Parenting Plans in Chapter 10, IV.

1. Inappropriateness of mediation in protection order proceedings

The National Council of Juvenile and Family Court Judges recommends:

Judges should not mandate mediation in cases where family violence has occurred. Because assault of any kind is a serious crime and needs to be treated as such by the courts, mediation of family violence is simply not an appropriate response. Mediation is a process by which the parties

voluntarily reach consensus agreement about the issue at hand. Violence, however, is not a subject for compromise. Thus, when the issue before the court is a request for an order of protection or a criminal family violence charge, mediation should not be mandated. The victim receives no protection from the court with a mediated ‘agreement not to batter.’ And a process which involves both parties mediating the issue of violence implies, and allows the batterer to believe, that the victim is somehow at fault.¹⁶

2. Distinction between mediated orders and agreed or stipulated orders
 - a. “Agreed civil protection orders” or stipulations are not a result of mediation; they are generally presented to judges after negotiation between counsel in which the parties have been able to come to an agreement as to the provisions that must be included in the protection order.
 - b. “[O]nce an emergency protection order has been issued, attorney-assisted negotiation between the victim and the offender can be helpful to work out the complex details of such matters as visitation, necessary exchange of personal goods, and other provisions to be included in the permanent order.”¹⁷

XVI. Mutual Protection Orders Disallowed

Unless done to realign the parties, the court may **not** enter an order for protection to a party who has not properly filed and served a petition. See Section XVII below. This section of the statute is a reflection that mutual protection orders can create the following problems:

- Due process problems when issued without prior notice, written application, or finding of good cause.
- Significant problems of enforcement which render them ineffective in preventing further abuse. Police may have no way of determining whose conduct is enjoined. This may result in both parties being arrested or in no arrests being made.

- Signaling the batterer that such behavior is excusable, was perhaps provoked, and that the batterer will not be held accountable for the violence, making future violence more likely.
- Allowing a manipulative batterer to entrap a victim in contact that may lead to an arrest.

XVII. Realignment of Parties and Consolidation of Actions

A. Realignment of Parties

The court may re-align the parties where the courts finds the original petitioner is the abuser and the original respondent is the victim and may issue a temporary order for protection until the victim is able to prepare a petition. [RCW 26.50.060\(4\)](#) .

B. Consolidation of Actions

An order issued under [RCW 26.50](#) may be consolidated with an action filed under [RCW 26.09](#), [26.10](#), or [26.26](#). [RCW 26.50.025\(2\)](#). See Section XV, B.

XVIII. Modifications of Civil Protection Orders

A. [RCW 26.50.130](#) Provides that the Court May Modify or Terminate a Protection Order “Upon Application with Notice to All Parties and After a Hearing.”

1. Protection orders may be modified to include any remedy that could have been included in the initial order.
2. Judges hearing modification of protection order requests should be well acquainted with the history of the relationship between the parties before entering a modification.

B. Modification Upon Reunification of Parties

1. The National Institute of Justice survey found that:

[J]udges . . . inform petitioners that they must come back to court to modify the protection order if they decide to try living with the respondent again. By having the victim return to court, the judge can

reassess the situation and make sure the victim is aware of all the risks of allowing the offender back into the home and is freely choosing to permit him to return. The judge can also make clear that the no-abuse provision can remain in force even though the eviction is vacated.¹⁸

2. A victim cannot waive a domestic violence protection order by consent. *State v. Dejarlais*, 88 Wn. App. 297, 299, 944 P.2d 1110 (1997). The court noted that allowing reconciliation to void a domestic violence protection order would be ignoring the role reconciliation plays in the domestic violence cycle. Legislative intent and public policy dictate that reconciliation and consent should not void a protection order. *Dejarlais*, 88 Wn. App. at 303. Only the court may rescind the order. *Dejarlais*, 88 Wn. App. at 304.

XIX. Electronic Record Keeping

A. Domestic Violence Database

In 1995, the Legislature began addressing the problem of competing orders by requiring the establishment of a database for use by courts in entering protection orders. [RCW 26.50.160](#) required that the Judicial Information System be available to all district, municipal, and superior courts by

July 1, 1997. The system contains the name and cause number for every protection order issued pursuant to [RCW 26.50](#), every no-contact issued under [RCW 10.99](#), every anti-harassment issued pursuant to [RCW 10.14](#), every dissolution action issued pursuant to [RCW 26.09](#), every third-party custody action issued pursuant to [RCW 26.10](#), every parentage action issued pursuant to [RCW 26.10](#), every restraining order obtained under [RCW 26.44](#), all foreign protection orders filed pursuant to [RCW 26.52](#), and every order for the protection of a vulnerable adult issued pursuant to [RCW 74.34](#). The criminal history of all parties shall also be entered into the system along with “[o]ther relevant information necessary to assist courts in issuing orders under this chapter as determined by the judicial information system committee.” [RCW 26.50.160\(3\)](#).

In 2006, the Legislature added sexual assault protection orders issued under [RCW 7.90](#) to the data base requirements.

[ER 1101\(c\)\(4\)](#) provides that, upon that a court may refer to the Domestic Violence Database, when ruling on a petition for a domestic violence protection order or an anti-harassment order. That section provides:

When a judge proposes to consider information from a domestic violence 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.

The current version of the database is accessible through the Judicial Access Browser System (JABS). The Administrative Office of the Courts has prepared detailed instructions for accessing JABS. A detailed discussion of the domestic violence database is found in Chapter 9.

B. Computer-Based Intelligence Information System

Virtually all of the orders that are required to be entered into the domestic violence database are also to be entered into the computer-based intelligence information system. The clerk of the court is to forward a copy of the order on or before the next judicial day to the law enforcement agency specified in the order. That agency is to enter the order into a computer-based criminal intelligence system.¹⁹ If the order is modified or terminated, the clerk is to forward a copy of the superseding document to the appropriate law enforcement agency.

Entry into the computer-based criminal intelligence information system constitutes notice that to all law enforcement of the existence of the order.

Even though entry into electronic record-keeping systems is required, the victim should be provided with a copy of the order and told to keep it with her at all times.

In *Donaldson v. Seattle*, 65 Wn. App. 661, 831 P.2d 1098 (1992), the order was not entered into the computer system and the petitioner did not have a copy of the order. The court said the police could not be expected to make an arrest under the circumstances.

XX. Civil Enforcement of Protection Orders: Civil Contempt

The effectiveness of protection orders depends largely on how well they are enforced by both the judiciary and law enforcement.

[I]t appears that when protection orders only offer weak protection, the explanation may lie in the functioning of the justice system rather than the nature of protection orders as a remedy. . . .

[C]hanges in the justice system's handling of protection orders can significantly increase their utility. . . . [W]here judges have established a formal policy that offenders who violate an order will be apprehended and punished, often with a jail term, both judges and victim advocates report the highest level of satisfaction with the system.²⁰

Comprehensive provisions of restraining orders are only as good as their enforcement. To improve enforcement, courts should develop, publicize, and monitor a clear, formal policy regarding violations. This might include follow-up hearings, promoting the arrest of violators, incremental sanctions for violations, treating violations as criminal contempt, and establishment of procedures for modification of orders. In addition, courts can establish procedures for monitoring offenders for compliance.²¹

Enforcement is the Achilles' heel of the civil protection order process because an order without enforcement at best offers scant protection and at worst increases the victim's danger by creating a false sense of security. Offenders may routinely violate orders if they believe there is no real risk of being arrested.

This situation, while deplorable, is not without remedy. Courts can develop, publicize, and monitor a clear, formal policy regarding violations in order to encourage respect for the court's order and to increase compliance.

This section outlines considerations for the court when using civil contempt powers to enforce court orders. It is meant to assist the court in improving the utility of court orders in domestic violence cases by establishing effective monitoring and enforcement mechanisms.

A. Violation of a Protection Order May Constitute Civil Contempt of Court, as well as Subjecting the Violator to Criminal Sanctions

In addition to applicable criminal penalties, "violation of an order issued under this chapter [[RCW 26.50](#)], [Chapter 10.99](#), [26.09](#), [26.10](#), [26.26](#), or [74.34 RCW](#), or of a valid foreign protection order as defined in [RCW 26.52.020](#), shall also constitute contempt of court, and is subject to the penalties prescribed by law." [RCW 26.50.110\(3\)](#).

A full discussion of civil contempt law is beyond the scope of this section. For an in-depth look at contempt law, see K. Callaghan, *Use of Contempt Power in Domestic Relations*, in FAMILY LAW DESKBOOK (Washington State Bar Association, 2000). Cases decided under [RCW 13.32A.250](#) concerning the use of contempt powers in enforcing BECCA orders, the court's application of review and enforcement mechanisms for youth at-risk and truancy orders, provide useful analogies to adult protection order review calendars. The still-evolving appellate case law demonstrates the struggles the trial and appellate courts have had in applying civil contempt law to conduct violations. See *In re M.B.*, 101 Wn. App. 425, 3 P.3d 780 (2000); *In re N.M.*, 102 Wn. App. 537, 540, 7 P.3d 878 (2000).

B. Available Sanctions

The court may impose two different types of sanctions depending upon the nature of the contempt and the procedure followed by the court in adjudicating the contempt.

1. Punitive sanctions

Punitive sanctions are “imposed to punish a past contempt of court for the purpose of upholding the authority of the court.” [RCW 7.21.010\(2\)](#). These are only available either for a contempt occurring in the court’s presence (direct contempt) or where criminal contempt proceedings are initiated by the prosecutor with the attendant due process protections.

2. Remedial sanctions

Remedial sanctions are imposed to coerce “performance when the contempt consists of the omission or refusal to perform an act that is yet in the person’s power to perform.” [RCW 7.21.010\(3\)](#). These may be initiated by a party or on the court’s own motion.

C. Procedure for Imposing Sanctions

1. Direct contempt may lead to summary imposition of either remedial or punitive sanctions

Direct contempt is conduct that occurs in the direct presence of view of the court. The court may summarily sanction contemptuous behavior which occurs within the courtroom where heard or seen by the judge. The alleged contemnor does not have a

constitutional right to a full hearing on the matter. [RCW 7.21.050](#); *In re Willis*, 94 Wash. 180, 162 P. 38 (1917).

- a. The court must impose the sanctions either immediately after the contempt occurs or at the end of the proceeding.
- b. The sanction may be only for the purpose of preserving order in the court and protecting the authority and dignity of the court.
- c. The person committing the contempt must be given an opportunity to speak in mitigation unless compelling circumstances are present. *Templeton v. Hurtado*, 92 Wn. App. 847, 965 P.2d 1131 (1998).
- d. The sanction imposed may be remedial or punitive:
 - (i) A remedial sanction forfeiture may not exceed \$500 for each day the contempt continues; and
 - (ii) A punitive sanction sentence may not exceed a fine of \$500 and imprisonment of 30 days, or both, for each act of contempt.

[RCW 7.21.050](#).

A party's threats of physical violence while in the courtroom could serve as a basis for a finding of direct contempt. However, the same threats, if made outside the courtroom or outside of the court's presence, would be indirect contempt. Where collateral testimony is necessary to establish the contemptuous conduct, direct contempt proceedings are not appropriate. In *Templeton v. Hurtado, supra*, the court imposed a sanction for direct contempt when a criminal defendant refused to sign a no-contact order. The contempt finding was reversed for procedural irregularities, without discussion of whether such refusal is punishable as direct contempt.

A court is well-advised to use moderation in issuing punitive sanctions in a summary proceeding for direct contempt in light of *State v Heiner*, 29 Wn. App. 193, 627 P.2d 983 (1981) (construed a previous statute, [RCW 7.20](#); although [RCW 7.21](#) now allows for summary imposition of punitive sanctions, long jail sentences without full criminal proceeding likely to be looked upon with disfavor by appellate courts). Written findings are required. *State*

v. Hobble, 126 Wn.2d 283, 892 P.2d 85 (1995); *Templeton v. Hurtado, supra*.

2. Indirect contempt – remedial sanctions

Indirect contempt of a court order may occur where the violation occurs outside of the court's presence and/or where collateral testimony is necessary to prove the contempt. This is the most common type of civil contempt.

Proceedings to impose remedial sanctions are initiated by either the court or a person aggrieved by a contempt of court:

- a. The person accused of contempt is entitled to notice and hearing. [RCW 7.21.030\(1\)](#).
- b. A person found to have committed contempt may be sanctioned as follows:
 - (i) By imprisonment for so long as a coercive purpose is served, if the contempt is of one of the types defined in [RCW 7.21.010\(1\)\(b\), 7.21.030\(2\)\(a\)](#);
 - (ii) By a forfeiture not to exceed \$2,000 for each day the contempt continues ([RCW 7.21.030\(2\)\(b\)](#));
 - (iii) By entry of an order designed to ensure compliance with a prior court order ([RCW 7.21.030\(2\)\(c\)](#));
 - (iv) By an alternate remedial sanction if the court finds that the sanctions in [RCW 7.21.030\(2\)\(a\) through \(c\)](#) are ineffectual to terminate the contempt of court;
 - (v) The court may order the person in contempt to pay losses suffered by the aggrieved party as a result of the contempt and costs incurred with the contempt action, including reasonable attorney fees ([RCW 7.21.030\(3\)](#));

(vi) Under [chapters 13.32A, 13.34](#), and [28A.225 RCW](#), the person may be committed to juvenile detention for a period of time not to exceed seven days ([RCW 7.21.030\(2\)\(e\)](#)).

3. Punitive sanctions

Proceedings to impose punitive sanctions are initiated by filing an information or complaint by the prosecuting or municipal attorney, either on the attorney's own initiative or at the request of a person aggrieved by the contempt. A fixed jail term cannot be imposed upon a contemnor for indirect contempt except in the context of a criminal proceeding, i.e., prosecutor files charges, right to jury trial etc. Although there is some suggestion in the case law that a court may exercise its "inherent powers" where it deems the statutory remedies inadequate, recent case law has emphasized that due process protections cannot be obviated in doing so. *In re M.B.*, 101 Wn. App. 425, 3 P.3d 780 (2000).

- a. A judge presiding in an action or proceeding to which the contempt relates may request the prosecuting or municipal attorney to commence punitive proceedings. Such judge is disqualified from presiding at the trial.
- b. An alleged contempt involving disrespect to or criticism of a judge disqualifies that judge from presiding at trial unless the person charged otherwise consents.
- c. A motion for imposition of remedial sanctions may be held jointly with a trial on information or complaint seeking punitive sanctions.
- d. A person found guilty of contempt may be punitively sanctioned as follows:
 - (i) By a fine of not more than \$5,000 for each separate contempt;
 - (ii) By imprisonment for not more than one year for each separate contempt; or
 - (iii) By both fine and imprisonment.

[RCW 7.21.040](#).

D. Advantages and Disadvantages to the Court Acting Proactively to Review and Enforce its Orders

1. Where compliance with the court order is measured by a neutral source, i.e., attendance at batterers' treatment classes, the information can be directly obtained by ordering the treatment provider to file regular reports with the court. The victim may not otherwise know whether the batterer is in compliance or may be afraid to complain about non-attendance. The court's *sua sponte* use of its review and enforcement mechanisms sends a powerful signal that domestic violence is not merely a private matter but one of concern to the public at large. *See, e.g., State v DeJarlais*, 136 Wn.2d 939, 969 P.2d 90 (1998).
2. Given the legal difficulties in fashioning a remedy that is coercive rather than punitive in nature, however, civil review and enforcement remedies are usually far less powerful than the criminal processes for enforcement. A civil contemnor must have "the keys to the jailhouse door" available to him at all times and must be given an opportunity while incarcerated to purge his contempt and seek immediate release. Therefore, it may be difficult to order incarceration except for a very brief time. *See State v Boatman*, 104 Wn.2d 44, 700 P.2d 1152 (1985). If the alleged violation also constitutes a crime, i.e. violation of the "no-contact" provisions of the order, it may be better to rely on criminal enforcement mechanisms.
3. In any contempt proceeding (except direct contempt occurring in the court's presence) that may result in incarceration, the alleged contemnor has the right to appointment of counsel at county expense if they cannot afford to hire one. *Tetro v Tetro*, 86 Wn.2d 252, 544 P.2d 17 (1975). A pro se victim may feel threatened by a proceeding in which the abuser has counsel even if it is only for the limited purpose of determining contempt.
4. The court will have to consider additional staffing and calendaring needs if it decides to set up a contempt review calendar. Who will be responsible for notifying the parties of the hearings? Who will write up the orders? What additional hearings will be created and can they be accommodated on the existing calendar or will additional calendars need to be created?

5. The use of contempt can cut both ways. If an abuser is required to answer a contempt motion for non-compliance with treatment, he may respond by seeking contempt against the victim for alleged denial of visitation with the children. The court's *sua sponte* use of review and contempt powers may deny the victim a chance to make those accommodations that she sees as vital to her and her children's safety.

XXI. Criminal Enforcement of Protection Order Violations

Issues concerning criminal enforcement are discussed more fully in Chapters III, IV, V, and VII.

A. What Violations of Orders are Subject to Criminal Sanctions?

RCW 26.50.110(1) provides:

Whenever an order is granted under this chapter, Chapter 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or there is a valid foreign protection order as defined in RCW 26.52.020, and the respondent or person to be restrained knows of the order, a violation of the restraint provisions, or of a provision excluding the person from a residence, workplace, school, or day care, or of a provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or of a provision of a foreign protection order specifically indicating that a violation will be a crime[.]

A “restraint provision” is a provision that restrains the respondent from committing acts of domestic violence and/or that restrains the respondent from having any contact with the victim, the victim’s children or members of the victim’s household. *Jacques v. Sharp*, 83 Wn. App. 523, 922 P.2d 145 (1996).

However, a violation of any provision of a domestic violence protection order which follows two prior convictions for violating a no-contact or domestic violence protection order subjects a defendant to felony criminal prosecution *even if the violation, itself, could not have been prosecuted pursuant to RCW 26.50.110(1)*. *State v. Chapman*, 40 Wn.2d 436, 998 P.2d 282 (2000).

B. Applicable Penalties

A criminal violation of a protection order is generally a gross misdemeanor. [RCW 26.50.110\(1\)](#). The violation is a felony, however, if:

1. The defendant has had two prior convictions for violating orders issued under any of the following provisions: [RCW 10.99.040](#), [10.99.050](#); [Chapters 26.09, 26.10, 26.26, 26.50 RCW](#), or a valid foreign protection order as defined in [RCW 26.52.020](#). The previous conviction need not involve the same person as is the victim in the current offense; or
2. The act that violates the order is an assault (not amounting to an assault in the first or second degree) or is an act “that is reckless and creates a substantial risk of death or serious physical injury to another person.”

NOTE: Effective July 1, 2000, felony violations of a protection order have been classified as seriousness level five offenses.²² [RCW 9.94A.515](#). A felony violation of a protection order is included within the definition of “crime against person” and subject to the filing standards of [RCW 9.94A.411](#). In addition, when sentencing an offender for a “crime against person,” the court is required to impose a community custody range. [RCW 9.94A.505\(11\)](#). The new penalties apply to offenses which occur on or after July 1, 2000, regardless of when the original order was issued. [RCW 9.94A.515](#).

C. Electronic Home Detention

Upon conviction, the court, “in addition to any other penalties provided by law,” may order the defendant to submit to electronic home detention. For further discussion see Chapter 4, III, G, 6.

D. Violation of a Protection Order

Violation of any provision of a protection order constitutes contempt of court. [RCW 26.50.110\(3\)](#). *Jacques v. Sharp*, 83 Wn. App. at 542. The existence of two different remedies in punishing a defendant who violates the restraint provisions of a protection order does not violate an accused’s right to equal protection. *State v. Horton*, 54 Wn. App. 837, 776 P.2d 703 (1989).

XXII. Full Faith and Credit—Violence Against Women Act (VAWA)

RCW 26.52: The Foreign Protection Order Full Faith and Credit Act

In 1999, in compliance with the Violence Against Women Act (VAWA), the Legislature adopted [RCW 26.52](#). In enacting [RCW 26.52](#), the Legislature intended that “barriers faced by persons entitled to protection under a foreign protection order will be removed and that violations of foreign protection orders be criminally prosecuted in this state.” [RCW 26.52.005](#).

A. Formal Requirements of the Foreign Order: [RCW 26.52.020](#).

A protection order is valid if the issuing court had jurisdiction over the parties and subject matter under its own laws.

A protection order is presumed to be valid where it “appears authentic on its face.”

B. Due Process Requirements: [RCW 26.52.020](#).

In order to be the subject of a Washington criminal prosecution, a foreign protection order must comply with due process. That is, the person restrained must have had notice and an opportunity to be heard or, in the case of an ex parte order, notice and an opportunity to be heard must have been given “as soon as possible after the order was issued, consistent with due process.”

C. What Violations of a Foreign Order Can Be the Subject of a Washington Criminal Prosecution?

As is true with Washington protection orders pursuant to [RCW 26.50.110\(1\)](#), a person who violates restraint, exclusion, and no-contact provisions of a foreign protection order is subject to criminal prosecution. In addition, “violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime” is punishable in Washington, even though violation of such provision contained in a Washington order would not be a crime. [RCW 26.52.070](#).

D. Child Custody Disputes: [RCW 26.52.080](#).

By enacting [RCW 26.52](#), the Legislature did not intend to change how jurisdiction is determined as to placement, custody, or visitation of children. Resolution of disputes regarding provisions in foreign protection orders dealing with custody placement or visitation of children “shall be

resolved judicially.” Whether a foreign order of protection’s provisions regarding child custody and visitation are to be given full faith and credit and what state has jurisdiction over placement of children is to be determined pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), [RCW 26.27](#), and in accordance with the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. 1738A. See Chapter 10, VII, and Appendix G for further information.

However, Section 2266 of Title 18, U.S.C. was amended in 2005 by inserting the following which gives Full Faith and Credit to:

(5) PROTECTION ORDER.—The term ‘protection order’ includes—

(B) any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence, or stalking.

E. Filing of Foreign Protection Orders and Entry into Law Enforcement Information Systems

[RCW 26.52.030](#) sets forth procedures for filing of a foreign protection order with the clerk of a Washington court. The order may be filed with the clerk of the court in the area in which the person seeking enforcement order resides or with the clerk of any Washington court “where the person entitled to protection believes enforcement may be necessary.” The order may be filed by the person seeking protection or may be sent directly by the foreign court or agency.

The clerk of the court in which the foreign protection order is filed is required to enter it in the Domestic Violence Data Base. [RCW 26.50.160\(1\)](#).

The clerk of the court in which the foreign protection order is filed is also required to forward information to the sheriff for entry into the law enforcement information system.

NOTE: A foreign protection order must be filed with a Washington court in order to be entered into the Domestic Violence Database.

F. Enforcement

A foreign protection order is enforceable even if it has not been filed with a court of this state or entered into the law enforcement information system. [RCW 26.52.030\(2\)](#).

XXIII. Enforcement of Protection Orders Against Members of the Armed Forces and Civilian Employees

On December 2, 2002, the President signed into law H.R. 5590 which requires military installations to give full faith and credit to orders of protection issued by civilian courts. It also references 18 U.S.C. § 2266(5) for the definition of protection order, which is part of the federal full faith and credit mandate. Specifically Public Law 107-311 amends Chapter 80 of title 10, U.S. Code by inserting a new section, [§ 1561a](#) after § 1561. The new section requires every military installation to give the same force and effect to a civilian order of protection as it has within the jurisdiction that issued such order. The law also calls on the Secretary of Defense to promulgate regulations to carry out § 1561a. It is unclear how violations will be treated, but the law suggests they are to be treated in accordance with the laws of the state issuing them, since the military does not have its own laws for punishing violations of orders of protection. In this sense it will be different than the usual full faith and credit mandate, as violations on base of protective orders from different states could yield different punitive sanctions based on which state issued the order.

XXIV. Electronic Access of Domestic Violence Protection Orders

In 2004, [GR 31](#) was amended to permit courts make court records available remotely. As of April of 2006, several counties have made court records—or at least some sub-set of court records—available on line. These include superior courts in Chelan, King, Kitsap, Pierce, and Thurston counties.

Courts considering make court records available remotely should consider the potential ramifications of § 106 of the Violence Against Women Act Court Training and Improvement Act of 2005, 109 P.L. 162; 119 Stat. 2960, codified 18 U.S.C. 2265(d)(3). This subsection of the Full Faith and Credit section is entitled “Limits on internet publication of registration” and provides:

A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration or filing of a protection order, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian

tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

The question of how GR 31 interacts with § 106 is somewhat unsettled. A note discussing some of the issues courts should consider when deciding whether to authorize remote access of court records—particularly of protection and restraining orders—is included at the in Appendix C: Federal Domestic Violence Laws.

¹ This chapter was originally adapted from materials prepared by Leslye Orloff for the Family Violence Prevention Fund, San Francisco, California (1992).

² Victoria L. Holt, Mary A. Kernic, Thomas Lumley, Marsha E. Wolf and Frederick P. Rivara, “Civil Protection Orders and Risk of Subsequent Police-Reported Violence,” *Journal of the American Medical Association* 288, no. 5 (August 7, 2002): 589-594; Judith McFarlane, Dr. PH, Ann Malecha, Ph.D., Julia Gist, Ph.D., Kathy Watson, MS, Elizabeth Batten, BA, Iva Hall, Ph.D. and Sheila Smith, Ph.D., “Protection Orders and Intimate Partner Violence: An 18-Month Study of 150 Black, Hispanic, and White Women,” *American Journal of Public Health* 94, no. 4 (April 2004): 613–618.

³ *Family Violence: Improving Court Practice* 22 (National Council of Juvenile and Family Court Judges, 1990) [hereinafter NCJFCJ]; Browne and Williams, “Resource Availability for Women at Risk: Its Relationship to Rates of Female-Perpetrated Homicide” (paper presented at the American Society of Criminology Annual Meeting, Montreal, Canada, November 11-14, 1987).

⁴ Patricia Tjaden and Nancy Thoennes, *Extent, Nature, and Consequences of Intimate Partner Violence* (Washington, D.C.: National Institute of Justice and the Centers for Disease Control and Prevention, Office of Justice Programs, United States Department of Justice, July 2000) (NCJ 181867).

⁵ Finn and Colson, *Civil Protection Orders: Legislation, Current Court Practice and Enforcement*, (National Institute of Justice, March 1990), at 2 [hereinafter NIJ CPO Study].

⁶ The Washington State Domestic Violence Fatality Review found that almost a third of the 320 abusers who committed homicides between January 1997 and June 2006 committed homicide-suicide. An additional 12 abusers killed themselves after attempting homicide. The abusers killed someone (most often their intimate partner, but also children, family members, friends, and new love interests of the victim) after the domestic violence victim had left, divorced or separated from the abuser, or was attempting to separate from the abuser. Kelly Starr, Margaret Hobart and Jake Fawcett, “If I had One More Day,” *Washington State Domestic Violence Fatality Review 2006* and “Every Life Lost is a Call for Change,” *Washington State Domestic Violence Fatality Review 2004* (Washington State Coalition against Domestic Violence, 2006, 2004), <http://www.wscadv.org/projects/FR/index.htm>, www.wscadv.org. See also E. Stark, A. Flitcraft, D. Zuckerman, A. Grey, J. Robuson and W. Frazier, *Wife Abuse in the Medical Setting* (Office of Domestic Violence, United States Department of Health and Human Services, 1980); P.A. Langan and C.A. Innes, “Preventing Domestic Violence Against Women,” *Bureau of Justice Statistics Special Report 1* (United States Department of Justice, 1986).

⁷ NIJ CPO Study, *supra* note 5, at 2.

⁸ <http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=16>.

⁹ NIJ CPO Study, *supra* note 5, at 1-2; Lerman, *A Model State Act: Remedies for Domestic Abuse*, 21 HARV. J. LEG. 70, no. 35 (1984); Lenore Walker, *The Battered Woman* (Harper and Row, 1979); Grau, Fagan and Wexler, “Restraining Orders for Battered Women: Issues of Access and Efficacy,” *Women and Politics* (April 1984): 13-28.

¹⁰ NIJ CPO Study, *supra* note 5, at 33.

¹¹ The Washington State Domestic Violence Fatality Review found that 32 percent of the domestic violence homicides involved suicide. *Supra* note 6, at 22.

¹² NIJ CPO Study, *supra* note 5, at 28.

¹³ The Supreme Court considered but rejected a Washington State Bar Association (WSBA) proposal to continue to apply the rules of evidence at the permanent hearing stage. It was, however, sufficiently concerned with due process issues connected with use of the Domestic Violence Database that it did require courts to disclose any reliance on the database in making their decisions. [ER 1101\(c\)\(4\)](#).

¹⁴ For a more thorough discussion of the evidentiary issues presented here, see 5, 5A and 5B K. Tegland, *Washington Practice: Evidence* (2003).

¹⁵ For further information contact AOC Legal Services, PO Box 41174, Olympia, WA 98504-1174. Temple Forms Line: 360-705-5328 or <http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=16>.

¹⁶ NCJFCJ, *supra* note 3, at 28.

¹⁷ NIJ CPO Study, *supra* note 5, at 32.

¹⁸ NIJ CPO Study, *supra* note 5, at 53.

¹⁹ The system currently in use is the Washington Crime Information Center (WACIC), which is available to all law enforcement agencies in the State.

²⁰ NIJ CPO Study, *supra* note 5, at 2.

²¹ *Family Violence: Improving Court Practice* (National Council of Juvenile and Family Court Judges, 1990), at 21-22.

²² Before this date, these offenses were “unranked” and thus subject to a 0 to 365-day penalty, regardless of the defendant’s prior record.