

# DVPO TIP SHEET

September 2018

## Service

Respondent must be personally served at least 5 **COURT** days before hearing.

*RCW 26.50.50*

If timely personal service cannot be made the court shall either require an additional attempt at obtaining personal service or permit service by publication or by mail.

*RCW 26.50.50*

The court shall not require more than two attempts at personal service prior to granting permission to serve by publication or mail.

*RCW 26.50.50*

## Procedure

Interpreters must be provided by the court at no cost to the parties.

*RCW 26.50.055*

Discovery requires court permission.

*Scheib v. Crosby, 160 Wn. App. 345 (2011)*

Cross examination and live testimony may be allowed only when determined necessary on a case-by-case basis.

*Aiken v. Aiken, 187 Wash.2d 491 (2017)*

The court shall provide written reasons for DVPO denials.

*RCW 26.50.060(7); Maldonado v. Maldonado, 197 Wn. App. 779 (2017)*

If respondent asserts privilege against self-incrimination and requests a continuance because of a pending criminal case, court should apply *Smith v. Smith*,

*404 P.3d 101 (Wash. App. 2017)*

## Evidence

**Recent** acts of domestic violence are **not** required for a protection order.

*Spence v. Kaminski, 103 Wn. App. 325 (2000)*

The written petition is good evidence.

*RCW 26.50.020(1)(a)*

Except for privileges, the rape shield statute and ER 412, the rules of evidence do not apply.

*ER 1101(c)(4)*

Mutual protection orders are not permitted unless both parties plead and prove domestic violence.

*RCW 26.50.060(5)*

An Order for Protection shall be granted if the court finds DV by a **preponderance of the evidence**.

*In re Levias, 83 Wn. 2d 253, (1973); see also, RCW 10.14.080(3)*

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## Relief Available

Petitioner's children and household members are entitled to full statutory protections even if no proof of direct harm.

*RCW 26.50.020; Rodriguez v. Zavala, 188 Wn. 2d 586 (2017)*

Protections may include a change in visitation schedules.

*Maldonado v. Maldonado, 197 Wn. App. 779 (2017)*

A parent may not use unreasonable force to discipline a child. A child who is assaulted by a parent should be protected by a DVPO.

*RCW 9A.16.100, Maldonado*

If DV proved, the court **must** enter a DVPO even if another action is pending.

*RCW 26.50.025; Juarez v. Juarez, 195 Wn. App. 880 (2016)*

Petitioner is entitled to Order for Protection for one year or longer.

*RCW 26.50.060(2); Juarez v. Juarez, 195 Wn. App. 880 (2016)*

The court may enter a short-term order only if it makes a written finding as to the reason. Relief available in another action is not a reason.

*Juarez v. Juarez, 195 Wn. App. 880 (2016)*

The court may **not** order a Petitioner to file a family law case.

*Maldonado; Juarez; In re Marriage of Stewart, 133 Wn. App. 545 (2006)*

The court may provide additional relief, such as requiring the Respondent to pay services fees; enroll and complete a domestic violence treatment program; submit to a substance use or mental health assessment; attend a DV-specific parenting class; or submit to electronic monitoring.

*RCW 26.50.060(1)*

Petitioner entitled to attorneys' fees. The court may **not** order petitioner to pay respondent's fees.

*RCW 26.50.060(1)(g)*

## Weapon Surrender & Violations

When a protection order is granted after notice and opportunity to be heard, the court **shall** issue an order to surrender any and all firearms. It **shall not be** incumbent upon the Petitioner to request the court to pursue this information.

*RCW 9.41.040, 18 U.S.C. §922(g)(8)*

The party ordered to surrender weapons has the burden to prove compliance.

*Braatz v. Braatz, 413 P.3d 612 (Wash. App., 2018)*

Parties should consider reporting orders of noncompliance by offenders to law enforcement under *RCW 9.41.810*

Any violations of a domestic violence protection order may be a crime and may also constitute contempt of court.

*RCW 26.50.110*

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