

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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