

DOMESTIC VIOLENCE PROTECTION ORDER BASICS



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How did we get to the Domestic Violence Prevention Act?

- Brief historical context...
 - 1970's – Women's Movement – creation of first shelters for DV survivors.
 - 1979 – RCW 70.123, et. seq. – established funding for first DV shelters.
 - 1979 – RCW 10.99 – Domestic Violence Act
 - 1983 – Statewide study determined that DVA was insufficient to protect victims.
 - 1984 – DVPA enacted, created DVPOs for victims to request relief without law enforcement or attorney.

DVPOs and Other Orders

- There are several types:
 - Anti-Harassment (RCW 10.14)
 - Sexual Assault (RCW 7.90)
 - Stalking (RCW 7.90.032)
 - Criminal No Contact Order (RCW 10.99)
 - Restraining Order (RCW 26.09 and RCW 26.26)
 - Vulnerable Adult (RCW 74.34)
 - Extreme Risk (RCW pending)

DVPOs and Other Orders (con't)

- Summary of main differences:
 - <https://wscadv.org/wp-content/uploads/2015/06/WA-State-Civil-Safety-Order-Comparison-Chart.pdf>
- Which PO to file flow chart?:
 - <http://www.kingcounty.gov/~media/courts/Clerk/Images/What-Type-PO.ashx?la=en>

Request for Temporary DVPO

- Most people request Temporary DVPO in Petition
- Legal requirement for Temporary DVPO to issue is “irreparable injury”

Request for Temporary DVPO (con't)

- What is irreparable injury? (RCW 26.50.070)
 - 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.

Request for Temporary DVPO (con't)

- How to prepare request for Temp DVPO:
 - Yes –
 - Be specific – use direct quotes (threats/verbal abuse) and dates/times if possible.
 - No –
 - Don't be general!

Request for Temporary DVPO (con't)

- Examples:
- On January 1, 2016 John came to my apartment and grabbed me by the shoulder and threw me to the floor. He said I was a piece of a shit and that he would kill me next time.
 - Vs.
- He came to my apartment and called me names and hurt me.

Definition of domestic violence

- RCW 26.50.010(3) defines DV for the purposes of a DVPO as follows:
 - Physical harm,
 - bodily injury,
 - assault,
 - or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members
 - Includes sexual assault and stalking (defined in RCW 9A.46.110)

Discussion of infliction of fear...

- *In re T.W.J.*, 193 Wn. App. 1 (2016) – Respondent made a conditional threat to his attorney multiple times. Respondent stated “if he ‘gets screwed’ (in parenting plan case) the is going to ‘Kill [Petitioner]””
- Trial court granted DVPO and COA upheld based on disclosure of statement by Respondent's attorney.

Who is a family or household member?

- Defined by RCW 26.50.010(6).
 - spouses,
 - domestic partners,
 - former spouses,
 - former domestic partners,
 - 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,
 - persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

Who can file PO?

Basic Rule:

RCW 26.50.020(1)(a) Any person may seek relief under this chapter by filing a petition with a court alleging that the person has been the victim of domestic violence committed by the respondent. The person may petition for relief on behalf of himself or herself and on behalf of minor family or household members.

Who can file PO? (con't)

Exceptions to “any person” filing:

RCW 26.50.020(2)(a) A person under eighteen years of age who is sixteen years of age or older may seek relief under this chapter and is not required to seek relief by a guardian or next friend.

RCW 26.50.020(2)(b) A person under sixteen years of age who is seeking relief under subsection (1)(b) of this section is required to seek relief by a parent, guardian, guardian ad litem, or next friend.

RCW 26.50.020(1)(b) Any person thirteen years of age or older may seek relief under this chapter by filing a petition with a court alleging that he or she has been the victim of violence in a dating relationship and the respondent is sixteen years of age or older.

Who can file PO? (con't)

Guardian Ad Litem:

RCW 26.50.020(3) No guardian or guardian ad litem need be appointed on behalf of a respondent to an action under this chapter who is under eighteen years of age if such respondent is sixteen years of age or older.

RCW 26.50.020(4) The court may, if it deems necessary, appoint a guardian ad litem for a petitioner or respondent who is a party to an action under this chapter.

Definition and who can file in play.

- **Example:**
 - Mom lives with boyfriend of two years. Mom has a child, aged 13 who lives with the both of them. One day, boyfriend gets angry because child spilled soda on his laptop and beats child severely. After the assault, child also discloses that boyfriend has been sexually assaulting child on and off for a period of 5 months.
 - Who can file? Based on what?

Filling Out Rest of Protection Order

- Page 5 Is where there is room to include most recent DV in detail and other details.
- Do not hesitate to add additional pages if needed!
- Do not hesitate to submit other declarations – but be wary...

Not immediate focus of DVPO

- These are all indicative of DV as the backstory, but main focus should be on legal definition:
 - Verbal/psychological abuse
 - Calling names
 - Controlling behavior – cell phone, financial, etc.
- Remember legal definition of DV...
 - Threats!!!

When did DV occur?

- Usually want to include in chronological order of acts of DV that have occurred.
- When is it appropriate not to include in chronological order?
 - When worst DV happened further back – may want to explain worst first!

When did DV occur? - Evidence!

- How to determine when DV occurred?
 - Past police reports
 - Past medical records
 - Past court case filings – criminal and/or family
 - Other witnesses who can help victim refresh their memory
- These are great not only for timeline, but serve as evidence!!!

Now we know when, now what to include in timeline?

- Some questions to ask:
 - Bruising, cuts, black eyes, broken bones?
 - Bleeding?
 - Size of injury?
 - Pain – how long? (day/days?)
 - Medication taken as a result? (Which medication?)
 - Medical attention received?
 - Hospitalized?

Records resources.

- Odyssey
(<https://prdodypub.courts.wa.gov/ODYPORTAL>)
 - Superior Courts – not all are included.
- WA State Courts
(<http://dw.courts.wa.gov/>)
 - Municipal Court and District Court cases are still included to get information/case numbers.
 - Superior Courts – hit and miss.
- Judicial Information Systems
(<https://www.courts.wa.gov/jislink/>)
 - Can get dockets from many cases.

How to describe injuries?

- Explain how received? YES!:
 - Joe pushed me over the chair and I fell to the floor. I hit my head on the edge of the kitchen table. I was bleeding from the back of my head. I saw stars. Joe stood over me laughing and calling me a bitch. It felt tender to the touch and I had pain for 2 days and took Advil during that time. I put a ice pack on my head when I could during the first 24 hours. I didn't go to the doctor because I didn't have insurance.

How to describe injuries? Con't.

- Explain how received? No!:
 - Joe pushed me. I fell and hurt my head. It hurt for a long time.

Photos of injuries

- Photos are great. Photo tips.:
- Someone else needs to take them –
 - Take when injury has developed
 - Print them out on GOOD paper and attach to Petition if possible.
 - Take one up close and then one from far away
 - If photos attached to Petition, make sure to include date as to when taken (don't need to say who)

Protecting children in DVPOs.

- *In re Marriage of Stewart*, , 133 Wn. App. 545 (2006)
- *Maldonado v. Maldonado*, --- Wn. App. --- (2017)
- *Rodriguez v. Zavala* – oral argument in Supreme Court soon.

Best practices of addressing children in DVPOs.

- If the parties have children, then very important to ask questions and include info in DVPO petition. Some questions to ask:
 - Was child/children in same room, apartment, house?
 - Was child/children crying, nervous, anxious afterwards?
 - Did child/children call police?
 - Did child/children intervene?
 - Did child/children have issues at school (grades/outbursts)?

Best practices of addressing children in DVPOs. (con't)

- Explain how received? Good way...
 - John pushed me over the chair and I fell to the floor. I hit my head on the edge of the kitchen table. Our daughter's were eating cereal at the table and started crying. I was bleeding from the back of my head. I saw stars. Our daughter's screamed "daddy! No!" and helped me get up. John stood over me laughing and calling me a bitch. It felt tender to the touch and I had pain for 2 days and took Advil during that time. I put a ice pack on my head when I could during the first 24 hours. I didn't go to the doctor because I didn't have insurance.

Best practices of addressing children in DVPOs. (con't)

- Children as witnesses /declarations from children – under 18 years of age...
 - Generally NO.
 - May be OK if the child isn't the Respondent's child. Look at age, etc.
- Local Rule may disfavor.
 - King County Local Rule – LFLF6(e)(2) states: **Children's statements.** Declarations by minors are disfavored.
- If statements made to others, then they can attest to, as hearsay is allowed in DVPO hearings.
 - Other adults – in CPS records, police reports, medical reports, GAL, etc.
- Respondent forcing children to testify – look at case law.
 - *Gourley v. Gourley*, 158 Wn.2d 460 (2006)
 - *Aiken v. Aiken*, --- Wn.2d --- (2017)

“special proceedings”

- CR 81 – “Except where inconsistent with rules or statutes applicable to *special proceedings*, these rules shall govern all proceedings. Where statutes relating to *special proceedings* provide for procedure under former statutes applicable generally to civil actions, the procedure shall be governed by these rules.”
- Supreme Court of Washington defined “special proceedings” “as solely proceedings created or completely transformed by the legislature including ‘actions unknown to common law (such as attachment, or certiorari), as well as those where the legislature has exercised its police power and entirely changed the remedies available (such as the worker’s compensation system)”

“special proceedings” (con’t)

- *Scheib v. Crosby*, 160 Wn. App. 345 (2011) – determined that DVPO cases are special proceedings.
 - “the trial court retained the inherent authority and discretion to decide the nature and extent of any discovery under the DVPA”

DVPOs and Parenting Plans

- RCW 26.09.191 – provision of the Parenting Act that can limit a parent’s ability to engage in decision making and restrict residential time.
- RCW 26.09.191(2)(n) is key language about impact of DVPO on PP case: “The weight given to the existence of a protection order issued under chapter 26.50 RCW as to domestic violence is within the discretion of the court.”

DVPOs and Parenting Plans (con't)

- What happens with visitation granted in a PO and a later filing of a PP?
 - Residential time/contact/visits are really pending a determination in a PP case and orders entered there.
- What happens if you get a PO once a PP is already in place?
 - Temporally suspends provisions as provided for in DVPO – DVPO must be followed – see *In re Marriage of Stewart and Maldonado*.

Other DVPO issues...

- What if violence happened 3 years ago – can DVPO be requested?
 - Yes! See *Spence v. Kaminski*, 103 Wn. App. 325 (2000)
- Deny a DVPO or relief and Require victim to seek relief as part of disso or PP case.
 - No! Improper basis! See RCW 26.50.025(2) and decisions in *Juarez v. Juarez*, 195 Wn. App. 880 (2016) and *Maldonado*.

Issues which may arise/exist which could impact DVPO case

- Anticipate issues brought up by Respondent
- Ask questions about –
 - Other legal actions filed; disso, parenting plan
 - Are there text messages/FB messages that may be vindictive
 - Delay in requesting DVPO
 - Police reports which are inconsistent with story/police inaction
 - Drug usage, mental health, etc.

Issues which may arise/exist which could impact DVPO case (con't)

- Prior slide issues...
 - Important to address up front to extent possible – don't want to spend half of hearing addressing red herring!
 - Most respondents in cases bring up non-sense.
 - Why? - Affects credibility!
- How to address?
 - Hard to say, because it's a case by case basis.

DVPO Related cases

- *City of Seattle v. Edwards*, 87 Wn. App. 305 (1997) –duration of DVPO when unspecified for purposes of violation
- *State v. Dejarlais*, 136 Wn. App. 939(1998) – collateral attack based on due process (addressed in later cases ie, *Gourley*, *Aiken*, etc.), also challenge to PO based on consent defense
- *Spence v. Kaminski*, 103 Wn. App. 325 (2000) – permanent PO granted, appeal by Respondent based on lack of recent act
- *State v. Karas*, 108 Wn. App. 692 (2001) – collateral attack based on lack of due process in DVPO proceeding (addressed in later cases ie *Gourley*, *Aiken*, etc.) and authority of commissioners in PO proceedings

DVPO Related cases (con't)

- *Hecker v. Cortinas*, 110 Wn. App. 865 (2002) – challenge to DVPO based on evidence and inclusion of Petitioner's wife as protected individual
- *Muma v. Muma*, 115 Wn. App. 1 (2002) – challenge to DVPO entered on identical facts as two prior DVPOs (facts are very confusing – need to graph). Addresses res judicata in POs and dynamics of violence.
- *City of Auburn v. Solis-Marcial*, 119 Wn. App. 398 (2003) – protection order can be enforced so long as restrained person knows of order
- *State v. Miller*, 156 Wn.2d. 23 (2005) – overrules part of holding in *Seattle v. Edwards* – whether validity of PO is an element of crime? It's not. Great language about people who violate POs.

DVPO Related cases (con't)

- *In re Marriage of Stewart*, 133 Wn. App. 545 (2006) – psychological harm as a basis to include children as protected individuals in POs
- *State v. Karas*, 108 Wn. App. 692 (2001) – collateral attack based on lack of due process in DVPO proceeding (addressed in later cases ie *Gourley*, *Aiken*, etc.) and authority of commissioners in PO proceedings
- *Gourley v. Gourley*, 158 Wn.2d 460 (2006) – due process rights in PO proceeding and ER1101 is constitutional

DVPO Related cases (con't)

- *Barber v. Barber*, 136 Wn. App. 512 (2007) – addresses renewal
- *Danny v. Laidlaw*, 165 Wn.2d 200 (2008) – not a DVPO case, outlines WA's policy changes on DV
- *In re Marriage of Meredith*, 144 Wn.App. 887 (2009) – addresses prior restraint on speech in PO
- *Neilson ex rel. Crump. v. Blanchette* – 149 Wn.App.111 (2009) – teen dating violence case, decision superseded by statutory changes

DVPO Related cases (con't)

- *Blackmon v. Blackmon*, 155 Wn. App. 715 (2010) – no constitutional right to jury trial in PO proceedings
- *Freeman v. Freeman*, 169 Wn.2d 664 (2010) – set forth modification factors for motion to terminate PO, decision superseded by statutory changes
- *Scheib v. Crosby*, 160 Wn. App. 345 (2011) – POs are special proceedings, superior court has discretion to allow or disallow discovery
- *City of Seattle v. May*, 171 Wn.2d (2011) – collateral bar rule – how POs can be challenged in subsequent criminal proceeding – explanation of void and voidable orders

DVPO Related cases (con't)

- *State v. Veliz*, 176 Wn.2d 849 (2013) – prosecution for custodial interference of PO provision, criminal statute amended making decision superseded by statute
- *In re T.W.J.*, 193 Wn. App. 1 (2016) – threat to kill made to third party sufficient to prove DV
- *Juarez v. Juarez*, 195 Wn. App. 880 (2016) – presumptive length of PO should be one year, but can be less if grounds exist. Lots of excellent language support one year PO. Can't defer/deny PO relief to another action.
- *Aiken v. Aiken*, --- Wn.2d --- (2017) – addresses due process right to cross examination/live testimony

DVPO Related cases (con't)

- *Maldonado v. Maldonado*, --- Wn. App. --- (2017) – low bar to prove fear of harm for children, cannot delay or deny inclusion of children in PO because of PP case, DVPA does not mandate one-year order