



# WASHINGTON STATE CRIMINAL JUSTICE COMMISSION

*Model Policy Desk Reference for Protection Orders, including Extreme Risk Protection Orders, Orders to Surrender and Prohibit Weapons, and DV 911 response involving firearm relinquishment.*

## INTRODUCTION

In 2024, the Washington State Criminal Justice Training Commission (WSCJTC) began work to provide model policies and protocols for law enforcement agencies that reflect comprehensive use of best practices for enforcement of firearm relinquishment laws, prohibiting those who present a heightened risk of harm from accessing or possessing firearms. The result of this work is not only this desk book but will also update training curriculum at the Basic Law Enforcement Academy, in-service training, and ongoing technical assistance to support law enforcement agencies, prosecutors' offices, and other system partners statewide. A defining goal is to provide consistent, effective implementation of firearm relinquishment laws, including Extreme Risk Protection Orders, Orders to Surrender and Prohibit Weapons, and Domestic Violence 911 response firearm relinquishment.

As with other public safety issues where law and practice have evolved over the years, this is an area where we can help improve the effective implementation of the law through adoption and implementation of model policy, protocols, and training that reflect current law and best practices.

Based on the discussions and input so far, we believe it would be helpful to not only provide the essential elements of what should be reflected in agency policy, but to also provide additional resources such as protocols, forms, checklists, and a more detailed explanation of case law as part of a "toolkit" that law enforcement and prosecutors can use to ensure legal requirements are met, best practices are used to help strengthen upstream firearm recovery and compliance enforcement, and to expand knowledge and expertise.

This desk reference can be used to guide model policy, training, and implementation. We have learned from our outreach that having this kind of information is particularly helpful because state law has been reformed over the past decade, and many agency manuals and statewide training haven't yet incorporated these changes in a comprehensive way.

We also learned that because agencies may structure their policy manuals differently, rather than provide one model policy for all agencies to adopt in the same format, it would be helpful to provide the essential elements of what should be included in policy and training, along with a checklist, forms, and tools, to allow agencies the ability to incorporate this information into existing policies in a structure with a level of detail that best aligns with their current manual.

One of our goals is to make it as easy as possible for agencies to update their policies and protocols and for WSCJTC to update statewide training modalities, to reflect current law and best practices so that statewide implementation can be as effective as possible.



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## PROTECTION ORDERS AND DOMESTIC VIOLENCE RESPONSE INVOLVING FIREARMS

**PURPOSE:** *This document is to help law enforcement agencies ensure that their policies and procedures reflect comprehensive use of best practices for implementation and enforcement of firearm relinquishment laws, prohibiting those who present a heightened risk of harm from accessing firearms.*

*The intent is that agencies adopt and implement the model policy and protocols, then participate in training specifically designed to help law enforcement agencies have more consistent, effective implementation and enforcement of these laws across the state.*

### HOW TO USE THIS DOCUMENT

This desk reference provides officers and supervisors with background information about the purpose of these laws, offers concrete guidance and direction for proactive implementation intended to reduce harm, and provides best practices for each of the steps involved.

The model policy is designed as a single-point reference document and is divided into sections so that agencies can incorporate the latest statutory requirements, procedures, protocols, and tool-kit materials into their own policy manual. It will also form a basis for ongoing training available across the state.

The model policy starts with a list of sections that can be used as a checklist. For operational, training, and risk management purposes, agencies are encouraged to use the model policy and related tool-kits to assess and update existing policies and procedures, particularly related to Extreme Risk Protection Orders (ERPOs), Order to Surrender and Prohibit Weapons (OTSPWs), and response to Domestic Violence (DV) situations involving firearms (or access to firearms) to ensure consistency with the model policy. The model policy (and best practice recommendations) is intentionally drafted to be scalable for all law enforcement agencies in the state.

Protocols, best practices, forms, checklists, and other tools are provided along with the model policy. Updates to the desk reference, model policies, and protocols will be offered each July if there have been any changes in law in the preceding legislative session. Additional updates may be provided because of changes in case law or other factors, such as input from those involved in implementation.



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The sections within the model policy are organized to correspond and cross-reference to other sections with closely related topics. When this occurs, there will be a note referencing the associated section; for example, Section 9: “Service of Orders” will have several cross-references to Section 12: “Enforcement of Orders”.

Several symbols are also utilized in this document:



This symbol is used to bring attention to critical or highly important sections of the policy, usually involving statutory requirements or to prevent harm and risk.



This symbol is used to outline recommended best practices for the consideration of the law enforcement agency and the officers performing the functions outlined in the model policy.



This symbol is used within the model policy sections as reference if more information is available and where it can be located.



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## 1. INTENT BEHIND THE LAWS

**Purpose:** This section outlines the overarching intent and goals of the laws related to Protection Orders, Orders to Surrender and Prohibit Weapons, Extreme Risk Protection Orders, and domestic violence response situations involving firearms or access to firearms.

The statistical data and research conclusions provided are intended to demonstrate the magnitude of the problem in Washington State and correlate how the protections offered under the law can help to reduce harm to victims (and the community).

**The Risk:** Decades of experience by law enforcement officers has been backed by research outlining the danger and risk of harm by Domestic Violence (DV) perpetrators who have access to firearms.

Victims of DV, which is also referred to as Intimate Partner Violence (IPV), are five times more likely to be killed if their abusive partner has access to a gun<sup>i</sup> and twelve times more likely to be killed if an incident of violence involves a firearm.<sup>ii</sup> Domestic violence homicide impacts individuals of all races, with “non-Hispanic Black and American Indian/Alaska Native women being disproportionately at risk”. Most often, these murders are part of a pattern of abuse.

According to a 2023 study, the number of U.S. women alive today who have had an intimate partner use a gun against them is substantial: About 4.5 million have had an intimate partner threaten them with a gun; in addition, nearly one million have had a gun used against them by an intimate partner.<sup>iii</sup>

Non-fatal gun use has a likely psychological impact because guns can be lethal quickly and with relatively little effort, plus displaying or threatening with a gun can contribute to a context known as *coercive control*, which facilitates chronic and escalating abuse.<sup>iv</sup>

More domestic violence victims are killed by firearms than by all other means combined.<sup>v</sup>

Those risks extend not only to the direct victim of the abuse, but also frequently to their children, the law enforcement officers dispatched to respond, and to the community at large in the form of community violence and mass shootings.

**Multiple Victims:** According to research, domestic violence homicides account for more than one in four homicides in the United States and frequently involve multiple victims:<sup>vi</sup>

Using data from the Federal Bureau of Investigation's Supplementary Homicide Reports, results showed that firearms were used in 54.1% of domestic homicides. Firearm use was associated with a 70.9% increase in additional victimization in domestic homicides and 38.7% increase in non-domestic homicides.



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Males were nearly three times more likely to kill multiple victims in domestic homicides involving a firearm. These findings highlight the risk of multiple homicides in domestic homicide situations and the role of firearms in expanding the risk of victimization beyond a single victim.

Of these domestic violence homicide victims, 80% were intimate partners and 20% were corollary victims, which included family members, new intimate partners, friends, acquaintances, police officers, and strangers.<sup>vii</sup>

A 2021 study found that 59.1% of mass shootings between 2014 and 2019 were DV-related; in 68.2% of mass shootings, the perpetrator either killed at least one partner or family member or had a history of domestic violence.<sup>viii</sup>

**Suicide Prevention:** Suicide is the tenth leading cause of death in the United States overall, and the second leading cause of death among persons aged 10–34; it is the fourth leading cause for persons aged 35–44.<sup>ix</sup> In Washington State, recent statistics from Department of Health show that of suicides, 75% were male, 65% happened at home, most firearms used were handguns, and 25% of the firearms were owned by those who died by suicide.<sup>x</sup>

In just over two decades (1999–2019), approximately 800,000 deaths were attributed to suicide, with a 33% increase in the suicide rate over the period. In 2019, a total of 12 million adults reported serious thoughts of suicide during the past year, 3.5 million planned a suicide, and 1.4 million attempted suicide.

Firearms are the most common method used in suicides.

According to the Harborview Injury Prevention & Research Center, 90% of firearm-related suicide attempts end in death while only five percent of all other attempts are fatal.<sup>xi</sup>

Ninety percent of adolescents who survive a suicide attempt do not make another attempt, highlighting the importance of not having access to firearms. When someone is expressing a desire to end their life, removing their access to firearms can create enough space for those thoughts to subside and for them to get help.

A study of adolescent firearm-related suicides found that over half were carried out with guns. When accounting for the homes of friends and relatives this number is 75%. An estimated 36% of adults in Washington State have a gun in or around their home. Of those, more than half (51%) or about 971,000 reported having an unlocked firearm.



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**Securing Firearms:** Statutes prohibiting persons under Domestic Violence Protection Orders from accessing firearms are associated with overall reductions in intimate partner homicide.<sup>xii</sup>

For these reasons, researchers and fatality reviews have long recommended that to reduce intimate partner homicide and other harms, there needs to be improvement to the implementation of laws that prohibit individuals who are legally barred from having or acquiring guns, including more focus on ensuring firearms are swiftly removed from dangerous situations and enforcing compliance with court orders.

In recognition of these risks, federal law since the 1990's has prohibited firearm possession by those convicted of DV offenses and those subject to qualifying DV Protection Orders. But federal law does not include emergency temporary orders, other types of Protection Orders with similar risks, such as sexual assault, stalking, or harassment, or require firearms a respondent already has to be relinquished for the duration of the Protection Order.

**Second Amendment Balance:** In June 2024, the United States Supreme Court in [\*United States v. Rahimi\*](#) held a court could prohibit firearm possession by a person with a Domestic Violence Restraining Order (called a civil protection order in many states, including Washington) in the absence of a corresponding criminal domestic violence conviction or charge. The Court held that when an individual has been found by a court to pose a credible threat to the physical safety of another, that individual may be temporarily disarmed consistent with the Second Amendment.<sup>xiii</sup>

**Order to Surrender & Prohibit Weapons:** Washington law authorizes courts to issue Orders to Surrender & Prohibit Weapons (OTSPW) when issuing a civil Protection Order, a No-Contact Order in a criminal case, or with certain types of Restraining Orders in family law cases.

Depending on the facts of the case, the court either must (mandatory) or may (discretionary) issue an OTSPW. An OTSPW prohibits accessing, having in one's custody or control, possessing, purchasing, receiving, or attempting to purchase or receive, any firearms or other dangerous weapons, as well as having a Concealed Pistol License (CPL), for the period the order is in effect.

The law requires firearms to be immediately relinquished to law enforcement and proof provided to the court by the person subject to the order.

In recent years, Washington's laws have been further strengthened to help reduce additional risk of harm by mandating, for example, that the OTSPW is to be served quickly by law enforcement; to emphasize further that firearms are to be removed when the order is served; and that compliance hearings are to be held by the court to ensure all firearms have been addressed.



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Ensuring removal of firearms as soon as possible referred to as “upstream recovery”, with courts ensuring swift and comprehensive compliance, are foundational aspects on which harm reduction and lethality prevention rest, particularly during what are known periods of heightened risk.<sup>xiv</sup>

**ERPOs:** In 2016, Washington voters authorized a new type of order, the Extreme Risk Protection Order, mandating immediate removal of firearms from those posing risk of harm to self or others, such as individuals in crisis, who may be indicating intention to commit suicide.

ERPOs are unique not only because they specifically focus on limiting access to firearms, but also because a law enforcement officer may be the person who petitions for the order, in addition to a family or household member, or intimate partner.





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## 2. STATUTORY DEFINITIONS RELATED TO PROTECTION ORDERS/DV CRIMES

**Purpose:** This section references the specific statutory definitions related to civil protection orders under chapter 7.105 RCW and the statutory definitions related to the state's official response to domestic violence under chapter 10.99 RCW.



It should be noted that some of the statutory criminal definitions may be slightly different than those used for Civil Protection Orders, such as the difference in ages of intimate partners: age 13 or older for civil orders and age 16 or older under criminal domestic violence provisions.

**Definitions Related to Civil Orders:** The following definitions are related to Civil Protection Orders under [RCW 7.105.010](#):

"Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" for the purposes of a vulnerable adult protection order, means intentional, willful, or reckless action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. "Abuse" includes sexual abuse, mental abuse, physical abuse, personal exploitation, and improper use of restraint against a vulnerable adult, which have the following meanings:

"Improper use of restraint" means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline, or in a manner that is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW; is not medically authorized; or otherwise constitutes abuse under this section.

"Mental abuse" means an intentional, willful, or reckless verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. "Mental abuse" may include ridiculing, yelling, swearing, or withholding or tampering with prescribed medications or their dosage.

"Personal exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior or causing the vulnerable adult to perform services for the benefit of another.



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"Physical abuse" means the intentional, willful, or reckless action of inflicting bodily injury or physical mistreatment. "Physical abuse" includes, but is not limited to, striking with or without an object, slapping, pinching, strangulation, suffocation, kicking, shoving, or prodding.

"Sexual abuse" means any form of nonconsensual sexual conduct including, but not limited to, unwanted or inappropriate touching, rape, molestation, indecent liberties, sexual coercion, sexually explicit photographing or recording, voyeurism, indecent exposure, and sexual harassment. "Sexual abuse" also includes any sexual conduct between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not the sexual conduct is consensual.

"Chemical restraint" means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has the temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

"Coercive control" means a pattern of behavior that is used to cause another to suffer physical, emotional, or psychological harm, and in purpose or effect unreasonably interferes with a person's free will and personal liberty. In determining whether the interference is unreasonable, the court shall consider the context and impact of the pattern of behavior from the perspective of a similarly situated person. Examples of coercive control include, but are not limited to:

- Intimidation or controlling or compelling conduct by: Damaging, destroying, or threatening to damage or destroy, or forcing the other party to relinquish, goods, property, or items of special value; using technology to threaten, humiliate, harass, stalk, intimidate, exert undue influence over, or abuse the other party, including by engaging in cyberstalking, monitoring, surveillance, impersonation, manipulation of electronic media, or distribution of or threats to distribute actual or fabricated intimate images;
- Carrying, exhibiting, displaying, drawing, or threatening to use, any firearm or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate the other party or that warrants alarm by the other party for their safety or the safety of other persons;
- Driving recklessly with the other party or minor children in the vehicle;
- Communicating, directly or indirectly, the intent to harm the other party's children, family members, friends, or pets, including by use of physical forms of violence; harm the other party's career; attempt suicide or other acts of self-harm; or contact local or federal agencies based on actual or suspected immigration status;



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- Exerting control over the other party's identity documents;
- Making, or threatening to make, private information public, including the other party's sexual orientation or gender identity, medical or behavioral health information, or other confidential information that jeopardizes safety;
- Engaging in sexual or reproductive coercion;
- Causing dependence, confinement, or isolation of the other party from friends, relatives, or other sources of support, including schooling and employment, or subjecting the other party to physical confinement or restraint;
- Depriving the other party of basic necessities or committing other forms of financial exploitation;
- Controlling, exerting undue influence over, interfering with, regulating, or monitoring the other party's movements, communications, daily behavior, finances, economic resources, or employment, including but not limited to interference with or attempting to limit access to services for children of the other party, such as health care, medication, childcare, or school-based extracurricular activities;
- Engaging in vexatious litigation or abusive litigation as defined in [RCW 26.51.020](#) against the other party to harass, coerce, or control the other party, to diminish or exhaust the other party's financial resources, or to compromise the other party's employment or housing; or
- Engaging in psychological aggression, including inflicting fear, humiliating, degrading, or punishing the other party.

Coercive control does not include protective actions taken by a party in good faith for the legitimate and lawful purpose of protecting themselves or children from the risk of harm posed by the other party.

"Consent" in the context of sexual acts means that at the time of sexual contact, there are actual words or conduct indicating freely given agreement to that sexual contact. Consent must be ongoing and may be revoked at any time. Conduct short of voluntary agreement does not constitute consent as a matter of law. Consent cannot be freely given when a person does not have capacity due to disability, intoxication, or age. Consent cannot be freely given when the other party has authority or control over the care or custody of a person incarcerated or detained.

"Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. This includes any form of communication, contact, or conduct, including the sending of electronic communication, but does not include constitutionally protected free speech. Constitutionally protected activity is not included within the meaning of "course of conduct."



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In determining whether the course of conduct serves any legitimate or lawful purpose, a court should consider whether: Any current contact between the parties was initiated by the respondent only or was initiated by both parties; the respondent has been given clear notice that all further contact with the petitioner is unwanted; the respondent's course of conduct appears designed to alarm, annoy, or harass the petitioner; the respondent is acting pursuant to any statutory authority including, but not limited to, acts which are reasonably necessary to: Protect property or liberty interests; enforce the law; or meet specific statutory duties or requirements.

The respondent's course of conduct has the purpose or effect of unreasonably interfering with the petitioner's privacy or the purpose or effect of creating an intimidating, hostile, or offensive living environment for the petitioner; or contact by the respondent with the petitioner or the petitioner's family has been limited in any manner by any previous court order.

"Court clerk" means court administrators in courts of limited jurisdiction and elected court clerks.

"Dating relationship" 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.

"Domestic violence" means:

- Physical harm, bodily injury, assault, or the infliction of fear of physical harm, bodily injury, or assault; nonconsensual sexual conduct or nonconsensual sexual penetration; coercive control; unlawful harassment; or stalking of one intimate partner by another intimate partner; or
- Physical harm, bodily injury, assault, or the infliction of fear of physical harm, bodily injury, or assault; nonconsensual sexual conduct or nonconsensual sexual penetration; coercive control; unlawful harassment; or stalking of one family or household member by another family or household member.

"Electronic monitoring" has the same meaning as in [RCW 9.94A.030](#).

"Essential personal effects" means those items necessary for a person's immediate health, welfare, and livelihood. This includes, but is not limited to, clothing, cribs, bedding, medications, personal hygiene items, cellular phones and other electronic devices, and documents, including immigration, health care, financial, travel, and identity documents.

"Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, assisted living facilities; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' homes; chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed or certified by the department of social and health services.



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"Family or household members" means persons related by blood, marriage, domestic partnership, or adoption; persons who currently or formerly resided together; persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren, or a parent's intimate partner and children; and a person who is acting or has acted as a legal guardian.

"Financial exploitation" means the illegal or improper use of, control over, or withholding of, the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. This includes, but is not limited to:

- The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources, government benefits, health insurance benefits, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult;
- The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship or conservatorship appointment, which results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult; or
- Obtaining or using a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the vulnerable adult lacks the capacity to consent to the release or use of the vulnerable adult's property, income, resources, or trust funds.

"Firearm" means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder. "Firearm" does not include a flare gun or other pyrotechnic visual distress signaling device, or a powder-actuated tool or other device designed solely to be used for construction purposes. "Firearm" also includes parts that can be assembled to make a firearm.

"Full hearing" means a hearing where the court determines whether to issue a full Protection Order.

"Full Protection Order" means a Protection Order that is issued by the court after notice to the respondent and where the parties had the opportunity for a full hearing by the court. "Full Protection Order" includes an order entered by the court by agreement of the parties to resolve the petition for a Protection Order without a full hearing.

"Hospital" means a facility licensed under chapter 70.41 or 71.12 RCW or a state hospital defined in chapter 72.23 RCW and any employee, agent, officer, director, or independent contractor thereof.

"Interested person" means a person who demonstrates to the court's satisfaction that the person is interested in the welfare of a vulnerable adult, that the person has a good faith



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belief that the court's intervention is necessary, and that the vulnerable adult is unable, due to incapacity, undue influence, or duress at the time the petition is filed, to protect their own interests.

"Intimate partner" means spouses or domestic partners; former spouses or former domestic partners; persons who have a child in common regardless of whether they have been married or have lived together at any time, unless the child is conceived through sexual assault; or persons who have or had a dating relationship where both persons are at least 13 years of age or older.

"Isolate" or "isolation" means to restrict a person's ability to communicate, visit, interact, or otherwise associate with persons of their choosing. Isolation may be evidenced by acts including, but not limited to: Acts that prevent a person from sending, making, or receiving their personal mail, electronic communications, or telephone calls; or acts that prevent or obstruct a person from meeting with others, such as telling a prospective visitor or caller that the person is not present or does not wish contact, where the statement is contrary to the express wishes of the person.

The term "isolate" or "isolation" may not be construed in a manner that prevents a guardian or limited guardian from performing their fiduciary obligations under chapter 11.92 RCW or prevents a hospital or facility from providing treatment consistent with the standard of care for delivery of health services.

"Judicial day" means days of the week other than Saturdays, Sundays, or legal holidays.

"Mechanical restraint" means any device attached or adjacent to a vulnerable adult's body that the vulnerable adult cannot easily remove that restricts freedom of movement or normal access to the vulnerable adult's body. This does not include the use of devices, materials, or equipment that are medically authorized, as required, and used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW.

"Minor" means a person who is under 18 years of age.

"Neglect" means a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain the physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or an act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety including, but not limited to, conduct prohibited under [RCW 9A.42.100](#).

"Nonconsensual" means a lack of freely given consent.

"Nonphysical contact" includes, but is not limited to, written notes, mail, telephone calls, email, text messages, contact through social media applications, contact through other technologies, or contact through third parties.





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"Petitioner" means any named petitioner, or any other person identified in the petition on whose behalf the petition is brought.

"Physical restraint" means the application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include briefly holding, without undue force, a vulnerable adult in order to calm or comfort them or holding a vulnerable adult's hand to safely escort them from one area to another.

"Possession" means having an item in one's custody or control. Possession may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession, but there is dominion and control over the item.

"Respondent" means the person who is identified as the respondent in a petition filed under this chapter.

"Sexual conduct" means any of the following: Any intentional or knowing touching or fondling of the genitals, anus, or breasts, directly or indirectly, including through clothing; any intentional or knowing display of the genitals, anus, or breasts for the purposes of arousal or sexual gratification of the respondent; any intentional or knowing touching or fondling of the genitals, anus, or breasts, directly or indirectly, including through clothing, that the petitioner is forced to perform by another person or the respondent; any forced display of the petitioner's genitals, anus, or breasts for the purposes of arousal or sexual gratification of the respondent or others; any intentional or knowing touching of the clothed or unclothed body of a child under the age of 16, if done for the purpose of sexual gratification or arousal of the respondent or others; or any coerced or forced touching or fondling by a child under the age of 16, directly or indirectly, including through clothing, of the genitals, anus, or breasts of the respondent or others.

"Sexual penetration" means any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person including, but not limited to, cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.

"Stalking" means any of the following: Any act of stalking as defined under [RCW 9A.46.110](#); any act of cyber harassment as defined under [RCW 9A.90.120](#); or any course of conduct involving repeated or continuing contacts, attempts to contact, monitoring, tracking, surveillance, keeping under observation, disrupting activities in a harassing manner, or following of another person that: Would cause a reasonable person to feel intimidated, frightened, under duress, significantly disrupted, or threatened and that actually causes such a feeling; serves no lawful purpose; and the respondent knows, or reasonably should know, threatens, frightens, or intimidates the person, even if the respondent did not intend to intimidate, frighten, or threaten the person.



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"Temporary Protection Order" means a Protection Order that is issued before the court has decided whether to issue a full Protection Order. "Temporary Protection Order" includes ex parte Temporary Protection Orders, as well as Temporary Protection Orders that are reissued by the court pending the completion of a full hearing to decide whether to issue a full Protection Order. An "ex parte Temporary Protection Order" means a Temporary Protection Order that is issued without prior notice to the respondent.

"Unlawful harassment" means a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, harasses, or is detrimental to such person, and that serves no legitimate or lawful purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner; or a single act of violence or threat of violence directed at a specific person that seriously alarms, annoys, harasses, or is detrimental to such person, and that serves no legitimate or lawful purpose, which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner.

A single threat of violence must include:

- A malicious and intentional threat which threatens a specific person or group of persons and places that person, or members of the specific group of persons, in reasonable fear of harm to person or property. The fear must be a fear that a reasonable person would have under all the circumstances. A "reasonable person" is a reasonable person who is a member of the victim's race, color, religion, ancestry, national origin, gender, or sexual orientation, or who has the same gender expression or identity, or the same mental, physical, or sensory disability as the victim. Words alone do not constitute a hate crime offense unless the context or circumstances surrounding the words indicate the words are a threat. Threatening words do not constitute a hate crime offense if it is apparent to the victim that the person does not have the ability to carry out the threat;
- -or- the presence of a firearm or other weapon.

"Vulnerable adult" includes a person: Sixty years of age or older who has the functional, mental, or physical inability to care for themselves; or subject to a guardianship under [RCW 11.130.265](#) or adult subject to conservatorship under [RCW 11.130.360](#); or who has a developmental disability as defined under [RCW 71A.10.020](#); or admitted to any facility; or receiving services from home health, hospice, or homecare agencies licensed or required to be licensed under chapter 70.127 RCW; or receiving services from a person under contract with the Department of Social and Health Services to provide services in the home under chapter 74.09 or 74.39A RCW; or who self-directs their own care and receives services from a personal aide under chapter 74.39 RCW.

**Definitions Related to Criminal Domestic Violence:** The following definitions relate to the state's official response to Domestic Violence per [RCW 10.99.020](#):

"Agency" means a general authority Washington law enforcement agency as defined in





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## [RCW 10.93.020.](#)

"Domestic violence" includes but is not limited to any of the following crimes when committed either by one family or household member against another family or household member, or one intimate partner against another intimate partner:

- Assault in the first degree;
- Assault in the second degree;
- Assault in the third degree;
- Assault in the fourth degree;
- Drive-by shooting;
- Reckless endangerment;
- Coercion;
- Burglary in the first degree;
- Burglary in the second degree;
- Criminal trespass in the first degree;
- Criminal trespass in the second degree;
- Malicious mischief in the first degree;
- Malicious mischief in the second degree;
- Malicious mischief in the third degree;
- Kidnapping in the first degree;
- Kidnapping in the second degree;
- Unlawful imprisonment;
- Violation of the provisions of a Restraining Order, No-Contact order, or Protection Order restraining or enjoining the person or restraining the person from going onto the grounds of or entering a residence, workplace, school, or daycare, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, a protected party's person, or a protected party's vehicle;
- Rape in the first degree;
- Rape in the second degree;
- Residential burglary;
- Stalking; and
- Interference with the reporting of domestic violence.

"Family or household members" means adult persons related by blood or marriage; adult persons who are presently residing together or who have resided together in the past; and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.



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"Intimate partners" means spouses or domestic partners; former spouses or 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 presently or previously residing together who have or have had a dating relationship; persons 16 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; or persons 16 years of age or older with whom a person 16 years of age or older has or has had a dating relationship.

"Sworn employee" means a general authority Washington peace officer as defined in [RCW 10.93.020](#), any person appointed under [RCW 35.21.333](#), and any person appointed or elected to carry out the duties of the Sheriff under chapter 36.28 RCW.

"Victim" means a family or household member or an intimate partner who has been subjected to Domestic Violence.



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## 3. TYPES OF PROTECTION ORDERS

**Purpose:** This section explains the different types of Civil Protection Orders, and the differences among civil Protection Orders, Restraining Orders, No-Contact Orders and Orders to Surrender and Prohibit Weapons (OTSPW).

Per [RCW 7.105.900](#): “Washington State has been a national leader in adopting legal protections to prevent and respond to abuse, violence, harassment, stalking, neglect, or other threatening behavior, through the enactment of different types of civil Protection Orders, which are intended to provide a fast, efficient means to obtain protection against perpetrators of these harms.

### Civil Protection Orders:

In Washington State, the term “restraining order” has a specific legal meaning (see below). What most people mean when they say, “restraining order” is formally known in Washington as a “protection order.” Washington State law provides for several different types of protection orders, which apply to different situations and are designed to meet different needs.

Civil Protection Orders are most often issued by Superior Courts but may also be initially issued by a District Court and then transferred to Superior Court.

Chapter 7.105 RCW covers all six types of civil Protection Orders:

- (1) Domestic Violence Protection Orders, adopted by the legislature in 1984;
- (2) Vulnerable Adult Protection Orders, adopted by the legislature in 1986;
- (3) Antiharassment Protection Orders, adopted by the legislature in 1987;
- (4) Sexual Assault Protection Orders, adopted by the legislature in 2006;
- (5) Stalking Protection Orders, adopted by the legislature in 2013; and
- (6) Extreme Risk Protection Orders, enacted by a vote of the people through Initiative 1491 in 2016.

**!** Law enforcement officers should be aware that although these are civil orders, violation of a civil protection order is a criminal offense under [RCW 7.105.450](#) and will subject the respondent to arrest under [RCW 10.31.100](#).



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## Civil Protection Orders:

- Include a Petitioner (plaintiff or moving party); this is the person seeking protection from harm.
- Include a Respondent (responding party); the person who is causing or threatening harm.
- The facts presented to the court must meet the preponderance of evidence standard for the court to grant an order.
- The petitioner may request the court modify or terminate a civil order.
- If the court grants the order, then the respondent will be required to follow the conditions imposed by the order. For example, other than for ERPOs, the respondent could be ordered to stop threatening, harming, harassing, or stalking, not have any type of contact, or stay a certain distance away from home, work, or school.
- If the order is violated, the respondent could be subject to arrest and potential criminal charges.

## Overview of Protection Orders:

- **Domestic Violence Protection Order (DVPO):** A civil order to protect against domestic violence or threat of violence by an “intimate partner” or a “family or household member.” Domestic violence may include controlling behavior (“coercive control”).

Petitioners may seek protection for themselves and for family or household members who are minors or vulnerable adults.


A petitioner who has been sexually assaulted, harassed, or stalked by an intimate partner or a family or household member should, but is not required to, seek a DVPO, instead of another type of protection order.

- **Sexual Assault Protection Order (SAPO):** A civil order to protect a victim of nonconsensual sexual conduct or penetration, even if the conduct or penetration only occurred once. A single incident of nonconsensual sexual conduct or nonconsensual sexual penetration is sufficient grounds for a petition for a SAPO.






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-  **Antiharassment Protection Order (AHPO):** A civil order to protect against unwanted contact or behavior that causes substantial emotional distress and serves no legitimate or lawful purpose. The contact could be a pattern of behavior that occurs over time, or a single act or threat of violence which meets certain standards.

The contact must be directed specifically at the protected person and be seriously alarming, annoying, harassing, or detrimental.



-  **Stalking Protection Order (SPO):** A civil order to protect against stalking behavior that serves no lawful purpose and has reasonably caused the protected person to feel intimidated, frightened, under duress, significantly disrupted, or threatened. The respondent either knows or should know that their behavior causes those feelings, even if that was not the respondent's intent.
-  **Extreme Risk Protection Order (ERPO):** A civil court order that temporarily suspends an adult or juvenile's right to possess firearms if there is evidence that the person is threatening to harm themselves or others. Unlike a No Contact Order or other Civil Protection Orders, an ERPO does not restrict contact with persons or locations. An ERPO is limited to restricting the possession of and access to firearms or a concealed pistol license(s) (CPL). An ERPO may be requested by a family or household member, intimate partner, or law enforcement to restrain a respondent who poses a significant danger of causing personal injury to self or others by having in their custody or control, purchasing, possessing, accessing, or receiving, or attempting to purchase or receive a firearm.
-  **Vulnerable Adult Protection Order (VAPO):** A civil order to protect a vulnerable adult who has been abandoned, abused, financially exploited, or neglected, or is threatened with abandonment, abuse, financial exploitation, or neglect by respondent. The vulnerable adult, guardian, or other interested person may file on behalf of the vulnerable adult.

**Civil Restraining Orders:** In Washington State, a restraining order specifically applies to situations related to marriage where one (or both) of the spouses want to keep the other spouse away from them and/or any children who may be present. As with civil protection orders, a restraining order and firearm prohibition is possible depending on the circumstances. Civil Restraining Orders (related to divorce, legal separation, abuse of children, and parentage actions) are covered in chapters 26.09, 26.44, 26.26A, and 26.26B RCW.






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-  **Abused Child Restraining Order (ACRO):** A civil order to minimize trauma to a child who disclosed sexual or physical abuse by a parent, other family or household member, legal custodian, or guardian. The intent is to provide the earliest intervention possible.
-  **Family Law Restraining Order (FLRO):** Commonly known as a “Restraining Order,” these civil orders may be embedded within a family law case to prevent abuse, harassment, or harm to a person or child involved in a domestic relations action such as a divorce, parentage, or a parenting plan.


### Foreign Orders:

-  **Foreign Protection Order Information (FPOI):** An order to help Washington State courts and law enforcement recognize and enforce a Civil Protection Order from another US state, territory, the Commonwealth of Puerto Rico, the District of Columbia, any US military tribunal, or a tribal court.
-  **Canadian DV Protection Order (CDVPO):** An order to help Washington State courts and law enforcement recognize and enforce a Civil Protection Order from any province in Canada.
-  **Criminal No-Contact Orders (NCO):**
  - Issuance of a NCO is requested by a prosecutor (an attorney representing the interest of the city, county, or state), as part of a criminal case.
  - The person being restrained is referred to in this type of order as a defendant (rather than “respondent”).
  - The person protected from further contact is referred to as the victim (rather than “petitioner”).
  - Criminal cases typically begin with a police report, criminal investigation, and/or an arrest by law enforcement that is forwarded to the prosecutor for independent review. The prosecutor will decide whether to prosecute, amend, defer, or dismiss the case. Victims cannot decide to “press charges,” although victim input in charging decisions may be considered.
  - Once a case has been charged it will follow the process of a criminal case in a criminal court.
  - A victim may not request modification or termination of the order. The decision to modify or terminate a criminal order rests solely with the court.




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- Criminal NCOs are covered in chapters 10.99 and 9A.46 RCW.
- Criminal No-Contact Orders are similar to civil Protection Orders in preventing further harm, however they are typically requested by the prosecuting attorney in a criminal case or issued by a court at the time of arraignment to protect a victim of a crime while a criminal case is being investigated or prosecuted.
- Victim request, consent, or cooperation is not required for an order to be entered by the court.
- The presence of a related criminal case is not required to protect victims of domestic violence, sexual assault, stalking, harassment, to protect vulnerable adults, and to prevent access to firearms by those who are at a high risk of harming themselves or others.
- Violation of these orders could result in criminal prosecution and/or subject the respondent to contempt of court sanctions.
-  **Criminal Domestic Violence No-Contact Order (DVNCO):** This is a criminal order issued by a judge pursuant to an underlying criminal case to protect a victim against future violence or threats of abuse by the defendant.

In general, for a DVNCO, the abuse must be reported, and the defendant charged when the court issues this order. Often these orders are issued before the defendant is released from custody if booked for the offense.

One exception is the “Emergency No-Contact Order” whereby a peace officer may request an ex-parte DVNCO, Order to Surrender and Prohibit Weapons Order or Extreme Risk Protection Order on behalf of the victim. (See Section 4.)

-  **Criminal Harassment No-Contact Order (HNCO):** This is a criminal order issued by a judge pursuant to an underlying criminal case to protect against unlawful, repeated invasions of a person’s privacy, including through stalking, by acts and threats which show a pattern of harassment designed to coerce, intimidate, or humiliate the victim.

A crime must be reported, and the defendant must be charged before a court can issue this order.


-  **Other Criminal No-Contact Orders (NOCON or ORNC):** In addition to the orders



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listed above, if the court finds a criminal defendant has been charged with, arrested for, or convicted of the following offenses, the court may issue a No-Contact Order and include firearm prohibitions: Sexual Assault under chapter 9A.44 RCW; Stalking under chapter 9A.46 RCW, Promoting Prostitution under chapter 9A.88 RCW; and Human Trafficking under chapter 9A.40 RCW.

-  **Order to Surrender and Prohibit Weapons (OTSPW):** Under [RCW 9.41.800](#), when the court issues any Protection Orders, other than ERPOs, listed above, the judge must (mandatory) or may (discretionary) also issue an accompanying civil order, and may also issue in criminal DV cases, which requires the respondent to *immediately surrender* all firearms, CPL, and other dangerous weapons in the possession, custody, or control of the respondent to the designated local law enforcement agency. (See Section 6: “Orders to Surrender and Prohibit Weapons”.)





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- RELATED TOOL-KIT REFERENCES

*\*Court forms are found on the Washington Court website at:  
<https://www.courts.wa.gov/forms/?fa=forms.contribute&formID=142>*

<a href="#">NC 02.0110</a>	Domestic Violence No Contact Order	<i>Court form used to issue no-contact order related to DV crime</i>
<a href="#">PO Brochure</a>	Understanding Washington State Protection Orders	<i>Protection Order information</i>
<a href="#">POi 001</a>	Instructions for Petition for Protection Order	<i>Information on how to petition for Protection Order</i>
<a href="#">PO 001</a>	Petition for Protection Order	<i>Court form used to petition for a Protection Order</i>
<a href="#">POi 030</a>	Instructions for Temporary Protection Order and Hearing Notice	<i>Information on how to complete the temporary Protection Order form</i>
<a href="#">PO 030</a>	Temporary Protection Order and Hearing Notice	<i>Court form used to issue a temporary Protection Order</i>
<a href="#">POi 040</a>	Instructions for Protection Order	<i>Information on how to complete the Protection Order form</i>
<a href="#">PO 040</a>	Protection Order	<i>Court form used to issue a Protection Order</i>
<a href="#">PO 003</a>	Law Enforcement and Confidential Information (LECIF)	<i>Court form completed by petitioner to provide service information to LE</i>
<a href="#">PO 003R</a>	Law Enforcement and Confidential Information- Restrained Person (LECIFR)	<i>Court form completed by restrained person to provide service information to LE</i>



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## 4. EX-PARTE, FULL PROTECTION ORDERS, EMERGENCY NCOs, and OTSPWs

**Purpose:** This section explains the provisions for a temporary (ex-parte) Protection Order, and full (permanent) Protection Order or emergency No-Contact Order, initiated by law enforcement.

This section also outlines the type of “relief” or what the judge may require of the respondent in a Protection Order to protect the petitioner, any involved children, and take control or possession of certain property. Depending on the statutory requirements, the court also will or may issue an accompanying OTSPW to remove firearms and prohibit access to firearms by the respondent.

**Temporary (Ex-parte) Protection Orders:** A temporary or “ex parte” civil Protection Order may be issued by the court, is usually the first step in the process, when there is a concern about harm if protection isn’t quickly ordered. The court issues it without notice to the respondent and then must ensure the respondent is served notice and a hearing held within 14 days to determine whether a full order should be ordered. At the hearing, both the petitioner and respondent may appear to present evidence for consideration by the court in determining whether to issue a full Protection Order. A temporary order may be re-issued if the respondent is not timely served for the hearing.

For a temporary Protection Order to be issued, the court must find from the petition filed (and any additional evidence) that the respondent:

- *Has engaged in conduct against the petitioner that serves as a basis for a Protection Order; and*
- *“Serious immediate harm or irreparable injury” could result if an order is not issued immediately without prior notice to the respondent.*

There is a rebuttable presumption to include the petitioner’s minor children, if requested, as protected parties in a temporary or (ex-parte) DVPO until the full hearing, to reduce the risk of harm to children during periods of heightened risk, unless there is good cause not to include the minor children. If the court denies the petitioner’s request to include the minor children, the court must make written findings regarding why the children should not be included, pending the full hearing.

In issuing a temporary order, the court must consider the provisions of [RCW 9.41.800](#) and may issue an OTSPW requiring the respondent to surrender all firearms, dangerous weapons, and any concealed pistol license. If the temporary order is re-issued, the OTSPW must also be re-issued. (The OTSPWs are covered in Section 6).



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The court has broad discretion to grant such temporary relief as the court deems proper (as listed in the next section).

**Relief Available in Civil Protection Orders:** In issuing any type of Protection Order (other than a temporary (ex-parte) Antiharassment Protection Order and other than an ERPO) the court has broad discretion to grant such relief as the court deems proper, including an order that provides relief as follows:

- Restrain the respondent from committing any of the following acts against the petitioner and other persons protected by the order: Domestic violence; nonconsensual sexual conduct or nonconsensual sexual penetration; sexual abuse; stalking; acts of abandonment, abuse, neglect, or financial exploitation against a vulnerable adult; and unlawful harassment;
- Restrain the respondent from making any attempts to have contact, including nonphysical contact, with the petitioner or the petitioner's family or household members who are minors or other members of the petitioner's household, either directly, indirectly, or through third parties regardless of whether those third parties know of the order;
- Exclude the respondent from the residence that the parties share;
- Exclude the respondent from the residence, workplace, or school of the petitioner; or from the daycare or school of a minor child;
- Restrain the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location including, but not limited to, a residence, school, daycare, workplace, the protected party's person, and the protected party's vehicle. The specified distance shall presumptively be at least 1,000 feet, unless the court for good cause finds that a shorter specified distance is appropriate;
- If the parties have children in common, make residential provisions with regard to their minor children on the same basis as is provided in chapter 26.09 RCW. The court may not delay or defer relief under this chapter on the grounds that the parties could seek a parenting plan or modification to a parenting plan in a different action. A Protection Order must not be denied on the grounds that the parties have an existing parenting plan in effect. A Protection Order may suspend the respondent's contact with the parties' children under an existing parenting plan, subject to further orders in a family law proceeding;
- Order the respondent to participate in a state-certified domestic violence perpetrator treatment or a state-certified sex offender treatment program;



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- Order the respondent to obtain a mental health or chemical dependency evaluation. If the court determines that a mental health evaluation is necessary, the court shall clearly document the reason for this determination and provide a specific question or questions to be answered by the mental health professional;
- In cases where the petitioner and the respondent are students who attend the same public or private elementary, middle, or high school, the court, when issuing a Protection Order and providing relief, shall consider, among the other facts of the case, the severity of the act, any continuing physical danger, emotional distress, or educational disruption to the petitioner, and the financial difficulty and educational disruption that would be caused by a transfer of the respondent to another school;

The court may order that the respondent not attend the public or private elementary, middle, or high school attended by the petitioner. If a minor respondent is prohibited attendance at the minor's assigned public school, the school district must provide the student comparable educational services in another setting;

The court must send notice of the restriction on attending the same school as the petitioner to the public or private school the respondent will attend and to the school the petitioner attends;

- Require the respondent to pay the administrative court costs and service fees, as established by the county or municipality incurring the expense, and to reimburse the petitioner for costs incurred in bringing the action, including reasonable attorney fees;
- Restrain the respondent from harassing, following, monitoring, keeping under physical or electronic surveillance, cyber harassment, and using telephonic, audiovisual, or other electronic means to monitor the actions, location, or communication of the petitioner or the petitioner's family or household members who are minors or other members of the petitioner's household;
- Other than for respondents who are minors, require the respondent to submit to electronic monitoring. The order must specify who shall provide the electronic monitoring services and the terms under which the monitoring must be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the respondent to pay for electronic monitoring;
- Consider the provisions of [RCW 9.41.800](#), and order the respondent to surrender, and prohibit the respondent from accessing, having in their custody or control, possessing, purchasing, attempting to purchase or receive, or receiving, firearms, dangerous weapons, and any concealed pistol license;



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- Provide for possession and use of essential personal effects. The court must list the essential personal effects with sufficient specificity to make it clear which property is included.

Personal effects may include pets. The court may order that a petitioner be granted the exclusive custody or control of any pet owned, possessed, leased, kept, or held by the petitioner, respondent, or minor child residing with either the petitioner or respondent, and may prohibit the respondent from interfering with the petitioner's efforts to obtain the pet. The court may also prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified distance of specified locations where the pet is regularly found;

- Provide for use of a vehicle;
- Enter an order restricting the respondent from engaging in abusive litigation or in frivolous filings against the petitioner, making harassing or libelous communications about the petitioner to third parties, or making false reports to investigative agencies;
- Restrain the respondent from committing acts of abandonment, abuse, neglect, or financial exploitation against a vulnerable adult; require an accounting by the respondent of the disposition of the vulnerable adult's income or other resources; and restrain the transfer of either the respondent's or vulnerable adult's property, or both, for a specified period not exceeding 90 days;
- Order financial relief and restrain the transfer of jointly owned assets;
- Restrain the respondent from possessing or distributing intimate images, as defined in [RCW 9A.86.010](#), depicting the petitioner including, but not limited to, requiring the respondent to take down and delete all intimate images and recordings of the petitioner in the respondent's possession or control and cease any and all disclosure of those intimate images; or
- Order other relief as it deems necessary for the protection of the petitioner and other family or household members who are minors or vulnerable adults for whom the petitioner has sought protection, including orders or directives for a law enforcement stand-by to recover possessions per [RCW 7.105.320](#).

**Duration of the Order:** When issuing an order after notice to the respondent and a hearing, the court may either grant relief for a fixed period of time or enter a permanent order of protection. Other than for anti-harassment orders, the court may not grant relief for less than one year unless the petitioner has specifically requested relief for a shorter period of time.



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If a protection order restrains the respondent from contacting the respondent's minor children, the restraint must be for a fixed period not to exceed one year. This limitation is not applicable to protection orders issued under chapters 26.09, 26.26A, or 26.26B RCW which deal with family law, parentage, and child support.

All orders must specify the date the order expires, if any. (For permanent orders, the court will set the date to expire 99 years from the issuance date.)

**911 DV Response Emergency NCOs, OTSPWs, ERPOs:** When law enforcement has responded to a 911 DV incident, pursuant to [RCW 10.99.040](#), if there is concern for safety until a court hearing can be held, on an ex-parte basis and before criminal charges or any protection order has been filed, a law enforcement officer may request an Emergency NCO, OTSPW, or ERPO from a judicial officer on behalf of and with the consent of the victim (if the victim is able to provide consent).

If the victim is incapacitated because of the alleged act of domestic violence, a law enforcement officer may request an Emergency NCO, with an OTSPW, or ERPO on their behalf. The request must be made based upon the sworn statement of an officer and may be made in person, by telephone, or by electronic means to the judge. (ERPOs are covered in Section 7.)

**⚠** Each law enforcement agency must have a procedure for judicial access for an Emergency NCO after-hours in the same manner as seeking a search warrant from a magistrate. The Administrator of the Courts has a pattern petition form for officers to apply for an Emergency NCO. See attached tool-kit reference for court form # NC 02.0120.

Officers must be aware of this procedure, have the ability to download the form, and have access to judicial officers at all times.

If the judge finds probable cause to believe that the victim is in imminent danger of domestic violence based on an allegation of the recent commission of an act involving domestic violence, the judge must issue an Emergency NCO and an OTSPW or an ERPO.



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### ❖ RELATED TOOL-KIT REFERENCES

*\*Court forms are found on the Washington Court website at:*

<https://www.courts.wa.gov/forms/?fa=forms.contribute&formID=142>

<a href="#">NC 02.0120</a>	Law Enforcement Petition for Domestic Violence No Contact Order	<i>Court form used by LE officer to petition for emergency NCO on behalf of victim</i>
<a href="#">NC 02.0100</a>	No Contact Order	<i>Court form used to issue NCO related to a crime</i>



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## 5. PETITIONING FOR CIVIL PROTECTION ORDERS

**Purpose:** This section provides an overview of available civil Protection Orders under [RCW 7.105.100](#). Each of the orders is listed by name with reference to whom may petition for the order and the specific purpose of each order.

**!** Law enforcement officers should be aware that although protection orders are issued under a civil court process, violations of these orders are a criminal offense under [RCW 7.105.450](#) and will subject the respondent to arrest under [RCW 10.31.100](#).

**Domestic Violence Protection Order:** A petition for a Domestic Violence Protection Order must allege the existence of domestic violence committed against the petitioner or petitioners by an intimate partner or a family or household member as defined by statute.

The petitioner may petition for relief on behalf of themselves and on behalf of family or household members who are minors or vulnerable adults.

A petition for a Domestic Violence Protection Order must specify whether the petitioner and the respondent are intimate partners or family or household members. A petitioner who has been sexually assaulted or stalked by an intimate partner or a family or household member should, but is not required to, seek a Domestic Violence Protection Order, rather than a Sexual Assault Protection Order or a Stalking Protection Order.

**Sexual Assault Protection Order:** A petition for a Sexual Assault Protection Order must allege the existence of nonconsensual sexual conduct or nonconsensual sexual penetration that was committed against the petitioner by the respondent.

A petitioner who has been sexually assaulted by an intimate partner or a family or household member should, but is not required to, seek a Domestic Violence Protection Order, rather than a Sexual Assault Protection Order.

A single incident of nonconsensual sexual conduct or nonconsensual sexual penetration is sufficient grounds for a petition for a Sexual Assault Protection Order. The petitioner may petition for an order on behalf of:

- Themselves;
- A minor child, where the petitioner is the parent, legal guardian, or custodian;
- A vulnerable adult, where the petitioner is an interested person; or
- Any other adult for whom the petitioner demonstrates to the court's satisfaction that the petitioner is interested in the adult's well-being, the court's intervention is necessary, and the adult cannot file the petition because of age, disability, health, or inaccessibility.





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**Stalking Protection Order:** A petition for a Stalking Protection Order must allege the existence of stalking committed against the petitioner or petitioners by the respondent.

A petitioner who has been stalked by an intimate partner or a family or household member should, but is not required to, seek a Domestic Violence Protection Order, rather than a Stalking Protection Order.

The petitioner may petition for an order on behalf of:

- Themselves;
- A minor child, where the petitioner is the parent, legal guardian, or custodian;
- A vulnerable adult, where the petitioner is an interested person; or
- Any other adult for whom the petitioner demonstrates to the court's satisfaction that the petitioner is interested in the adult's well-being, the court's intervention is necessary, and the adult cannot file the petition because of age, disability, health, or inaccessibility.

**Vulnerable Adult Protection Order:** A petition for a Vulnerable Adult Protection Order must allege that the petitioner, or person on whose behalf the petition is brought, is a vulnerable adult and that the petitioner, or person on whose behalf the petition is brought, has been abandoned, abused, financially exploited, or neglected, or is threatened with abandonment, abuse, financial exploitation, or neglect, by the respondent.

**Extreme Risk Protection Order:** A petition for an ERPO must allege that the respondent poses a significant danger of causing personal injury to self or others by having in the respondent's custody or control, purchasing, possessing, accessing, receiving, or attempting to purchase or receive, a firearm.

The petition must also identify information the petitioner is able to provide about the firearms, such as the number, types, and locations of any firearms the petitioner believes to be in the respondent's current ownership, possession, custody, access, or control.

A petition for an ERPO may be filed by an intimate partner or a family or household member of the respondent, or a law enforcement agency. (There is additional detail on ERPOs in Section 7.)

**Antiharassment Protection Order:** A petition for an Antiharassment Protection Order must allege the existence of unlawful harassment committed against the petitioner or petitioners by the respondent.

If a petitioner is seeking relief based on domestic violence, nonconsensual sexual conduct, nonconsensual sexual penetration, or stalking, the petitioner may, but is not required to, seek a Domestic Violence, Sexual Assault, or Stalking Protection Order, rather than an Antiharassment Order.



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The petitioner may petition for an order on behalf of:

- Themselves;
- A minor child, where the petitioner is the parent, legal guardian, or custodian;
- A vulnerable adult, where the petitioner is an interested person; or
- Any other adult for whom the petitioner demonstrates to the court's satisfaction that the petitioner is interested in the adult's well-being, the court's intervention is necessary, and the adult cannot file the petition because of age, disability, health, or inaccessibility.

**Petition for Protection Orders by Minors:** With the exception of Vulnerable Adult Protection Orders, a person under 18 years of age, who is 15 years of age or older, may seek relief as a petitioner and is not required to seek relief through a petition filed on their behalf. They may also petition on behalf of a family or household member who is a minor if chosen by the minor and capable of pursuing the minor's stated interest in the action.

A person under 15 years of age who is seeking relief is required to seek relief by a person authorized as a petitioner under the applicable Protection Order.

**Petition by Interested Person:** If a petition for a Protection Order is filed by an interested person, the affidavit or declaration must also include a statement of why the petitioner qualifies as an interested person.

**Request for Relief Under Protection Order:** The Protection Order petition must contain a section where the petitioner, regardless of petition type, may request specific relief provided under the law that the petitioner seeks for themselves or for family or household members who are minors.

The totality of selected relief, and any other relief the court deems appropriate for the petitioner, or family or household members who are minors, must be considered at the time of entry of Temporary Protection Orders and at the time of entry of Full Protection Orders. (This is covered in Section 4: "Ex-Parte, Full Protection Orders and Emergency No Contact Orders.")



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### 6. ORDERS TO SURRENDER AND PROHIBIT WEAPONS (OTSPWs)

**Purpose:** This section addresses the specific actions and functions required when an OTSPW is issued pursuant to a civil Protection Order.

Per [RCW 7.105.900](#), “When domestic violence victims seek to separate from their abuser, they face increased risks. Forty-five percent of domestic violence homicides occur within 90 days of a recent separation, while 75 percent occur within the first six months of separation.”

“Domestic violence victims also face increased risks when their abuser has access to firearms. Firearms are used to commit more than half of all intimate partner homicides in the United States. When an abusive partner has access to a gun, a domestic violence victim is 11 times more likely to be killed.”

**Order to Surrender and Prohibit Weapons:** Under [RCW 9.41.800](#), when the court is issuing a protection order or criminal no contact order, the judge shall (mandatory) or may (discretionary) also issue an accompanying order which requires the respondent to *immediately surrender* all firearms, other dangerous weapons, and CPL in their possession, custody, or control of the respondent to the designated local law enforcement officer serving the respondent ([RCW 9.41.801](#)) at the time of service.

The same order will also require the restrained person to *immediately surrender* any concealed pistol licenses to the designated law enforcement agency at the time of service.

**Timely Service Required:** Given the importance of intervening as soon as possible due to the demonstrated risk presented by ongoing access to firearms, the service of an OTSPW must be attempted by law enforcement within 24-hours of receiving the order from the court.

While the OTSPW is in effect, the restrained person is prohibited from accessing, having in their custody or control, obtaining, possessing, purchasing, receiving, or attempting to purchase or receive any firearms or other dangerous weapons, or obtaining or possessing a concealed pistol license.

Given the heightened risks presented by the underlying facts and the nature of these orders, the respondent/restrained person may be uncooperative and present a significant ongoing danger to the petitioner and any minor children, as well as to the law enforcement officers who serve the order. (The service of orders is covered in Section 9; the enforcement of orders is covered in Section 12.)



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When the respondent instead receives notice of the OTSPW in a court hearing (versus service by LEA), the respondent must *immediately surrender* firearms, other dangerous weapons, and concealed pistol licenses by contacting the designated local law enforcement agency for directions on how to do so that same day.

☑ For firearm relinquishment that occurs as a result of notice initially provided at a court hearing rather than when the court's order is served, it is recommended that law enforcement agencies coordinate with local courts in advance to provide specific instructions on how the respondent shall surrender firearms to law enforcement *immediately* after the hearing and issuance of the order by the court.

The law enforcement agency should facilitate the respondent's compliance with the order of the court by *immediately* surrendering firearms and dangerous weapons without delay and as soon as possible after the hearing. Agencies may consider requesting the court notify the law enforcement agency as soon as the order is signed so that officers can accompany the respondent from court to the location where firearms will be surrendered.

The intent is to recover the firearms as soon as possible in a safe and controlled manner to discourage confrontation and not give the respondent a chance to inflict harm by using the firearms or remove or hide the firearms. Encouraging voluntary compliance with the order at every step of the surrender process is not only a more efficient use of time for law enforcement personnel but also can help to prevent additional risk of harm, de-escalate the event and the impact for the respondent.

Given the statutory requirement to immediately surrender firearms, the law enforcement agency must have a process to immediately accept surrendered firearms and should not require an appointment at a later date or time. This surrender process should be a directive issued under the authority of the chief or sheriff.

There are also specific statutory requirements for the reporting, tracking, and storage of firearms surrendered which are covered in more detail in other sections of this policy.



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The following chart outlines when a court shall (mandatory) or may (discretionary) issue an OTSPW when issuing a Protection Order:

Orders to Surrender & Prohibit Weapons (OTSPWs)

RCW	An OTSPW shall or may be issued of one of the following:	Ex-Parte	Full Order
9.41.800(1)	Preponderance of the evidence that Respondent: <ul style="list-style-type: none"> <li>Used a weapon in a felony, or</li> <li>Is ineligible under RCW 9.41.040</li> </ul>	Mandatory (shall be issued)	Mandatory (shall be issued)
9.41.800(2)	Protection Order* or No Contact Order or Restraining Order (issued under certain statutes), was issued (after a hearing for which Respondent had notice) that restrains Respondent from harassing, stalking, or threatening Petitioner or Petitioner's child or engaging in other conduct that would place them in reasonable fear of bodily injury; and <ul style="list-style-type: none"> <li>Includes a finding that Respondent represents a credible threat to the physical safety of Petitioner or Petitioner's child; or</li> <li>Explicitly prohibits the use, attempted use, or threatened use of physical force.</li> </ul>	N/A	Mandatory (shall be issued)
9.41.800(3)	Preponderance of evidence that irreparable injury could result if OTSPW not issued	Discretionary (may be issued)	N/A
9.41.800(4)	Preponderance of evidence of serious and imminent threat to public health or safety or to health or safety of any individual if OTSPW not issued	Discretionary (may be issued)	Discretionary (may be issued)

\*Applies to all types of civil protection orders other than ERPOs (which already Prohibit firearms): DV, Sexual Assault, Stalking, Anti-Harassment, and Vulnerable Adult

(The return of firearms to the respondent, or to another person claiming ownership of the surrendered firearm, is covered in Section 14: "Notification and Return of Firearms".)



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### ❖ RELATED TOOL-KIT REFERENCES

<a href="#"><u>WS 001</u></a>	Order to Surrender and Prohibit Weapons	<i>Court form for Order to Surrender &amp; Prohibit Firearms (OTSPW)</i>
<a href="#"><u>WS 300</u></a>	Motion for Surrender and Prohibition of Weapons	<i>Court form for petitioner to request OTSPW</i>
<a href="#"><u>WS 301</u></a>	Order Re Motion for Surrender and Prohibition of Weapons	<i>Court form granting OTSPW</i>



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## 7. EXTREME RISK PROTECTION ORDERS (ERPOs)

**Purpose:** This section addresses the type of protection order that is specific to preventing heightened risks of harm to self or others because of access to firearms. It is used where other restraints or protections provided for in the other types of protection orders are not requested or needed. A law enforcement agency may petition for this type of protection order, in addition to the intimate partners or family and household members. The ERPO has a specific statutory provision for seeking a search warrant to secure firearms for non-compliance.

Per [RCW 7.105.900](#), “In enacting the Extreme Risk Protection Order, the people intended to reduce gun deaths and injuries, while respecting constitutional rights, by providing a procedure for family, household members, and law enforcement to obtain a court order temporarily preventing individuals who are at high risk of harming themselves or others from accessing firearms when there is demonstrated evidence that the individuals pose a significant danger, including danger as a result of threatening or violent behavior.”

“These behaviors, which can include other acts or threats of violence, self-harm, or the abuse of drugs or alcohol, are warning signs that the person may soon commit an act of violence. Individuals who pose a danger to themselves or others often exhibit signs that alert family, household members, or law enforcement to the threat.”

“Restricting firearms access in these moments of crisis is an important way to prevent gun violence and save lives.”

“Extreme Risk Protection Orders are intended to be limited to situations in which individuals pose a significant danger of harming themselves or others by possessing a firearm, having immediate access to a firearm, or having expressed intent to obtain a firearm, and include standards and safeguards to protect the rights of respondents and due process of law. Temporarily removing firearms under these circumstances is an important tool to prevent suicide, homicide, and community violence.”

**Extreme Risk Protection Order:** An ERPO is intended to temporarily prevent individuals (both adults and juveniles) who are at high risk of harming themselves or others from possessing or accessing firearms or CPLs.

Under [RCW 7.105.100](#), family, household members, and law enforcement agencies may petition for an ERPO when there is evidence that the respondent poses a significant danger of causing personal injury to self or others by having in the respondent's custody or control, purchasing, possessing, accessing, receiving, or attempting to purchase or receive, a firearm.



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In addition, the petition must identify any known information about the firearms, such as the number, types, and locations of any firearms the petitioner believes to be in the respondent's current ownership, possession, custody, access, or control.

With an ERPO, there is no separate OTSPW. The ERPO itself requires the surrender and prohibition of firearms as well as any CPL issued.

An ERPO will be in effect for one year. The respondent/restrained person may ask the court to cancel (terminate) the order once in the 12-month period but must demonstrate that they no longer pose a significant danger to self or others by having access to firearms.

The petitioner may ask the court to renew the order 90 days before expiration.

**Search Warrant for Failure to Comply:** For ERPOs there is a specific statutory provision for seeking a search warrant to secure firearms when there is non-compliance. Under [RCW 7.105.340\(4\)](#), upon the sworn statement or testimony of the petitioner (or of any law enforcement officer) alleging that the respondent has failed to comply with the surrender of firearms as required by the ERPO, the court shall determine whether probable cause exists to believe that the respondent has failed to surrender all firearms in the respondent's possession, custody, or control.

If probable cause for a violation of the order exists, the court shall issue a warrant describing the firearms and authorizing a search of the locations where the firearms are reasonably believed to be and the seizure of any firearms discovered pursuant to such search.

(See additional information in Section 9, Service of Orders and Section 12, Enforcement of Orders.)

**Assistance to Family Members:** When a law enforcement officer encounters a family or household member who expresses interest in petitioning for an ERPO, information should be provided to the person about the ERPO process and how an ERPO may be obtained at Superior Court (or through Juvenile Court when the petition involves a minor). A temporary ERPO (ex-parte) can also be obtained at District Court, but it will later be transferred to Superior Court for the full hearing.

**Procedures for ERPO Petition by Law Enforcement:** Unlike other civil Protection Orders where the protected person petitions for the order, a law enforcement officer may petition the court for an ERPO if there is reasonable belief that a person is a present danger to themselves or another person by controlling, owning, purchasing, possessing, accessing, receiving or otherwise having custody of a firearm.





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An ERPO can provide law enforcement with an effective alternative for situations involving firearms where the criteria for a domestic violence relationship or the requirements for another Protection Order may not be present or where the person involved is engaging in behaviors that pose a danger to self or others but do not rise to the level of a crime.

☑ It is recommended that when considering an ERPO, the law enforcement officer should first review the ERPO petition with the designated agency ERPO coordinator, if one has been established, and/or a command staff officer to approve and coordinate the petition on behalf of the law enforcement agency. Per the statute, it is the agency that is the petitioner.

As a best practice, the designated ERPO coordinator is a sworn or non-sworn position or collateral duty within the agency with special expertise in establishing procedures for reviewing, petitioning, filing, database entry, coordination, and documentation of service, securing firearms, and providing regular training to agency personnel regarding the ERPO process.

This coordinator is a valuable resource for ERPO related questions, procedures, and assistance to agency personnel (as well as other regional law enforcement partners). The ERPO coordinator should have a relationship with the court, other agencies, and legal advisors to assist in troubleshooting ERPO related issues.

If available, the agency may also consider requesting legal review and representation by the agency's legal advisor.

A prosecutor or legal advisor can assist in triaging the situation in real time and providing input to best craft the ERPO response that may be needed, as well as be a valuable resource to help prevent delays when law enforcement is later at the location serving the ERPO.

**Use of Court Forms:** The law enforcement officer petitioning the court must use the ERPO forms available from the Administrative Office of the Court (and appropriate to the age of the respondent). Every court document related to the ERPO (petition, temporary order, addendum, declarations) must be completed in full, signed, and dated.

**Declarations or Statements:** When petitioning for the ERPO, the law enforcement officer must provide relevant evidence, documentation, and/or unsworn declarations as grounds for the order. When submitting an ERPO petition from law enforcement, officers should consider including sworn statements from witnesses and/or victims for the court's consideration.



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**⚠** “Unsworn Declarations,” are also known as a statement, verification, or certificate; per chapter 5.50 RCW, an unsworn declaration is a statement in a signed record not given under oath (in a formal setting such as a courtroom) but given under penalty of perjury (which is a notice at the bottom of the form). An unsworn statement or declaration form must conclude with substantially the following format:

*I declare under penalty of perjury under the law of Washington that the foregoing is true and correct.*

*Signed on the . . . . day of . . . . ., . . . ., (date) (month) (year)*

*at . . . . . (city or other location, and state or country)*

*. . . . . (printed name)*

*. . . . . (signature)*

Under [Washington Court Rule ER 1101\(c\)\(4\)](#), the judge is allowed to permit the admission of hearsay, such as an unsworn declaration, in hearings for Protection Orders.

Under [Gourley v. Gourley, 158 Wn.2d. 460, 145 P.3d 11835](#) (2006), a court may still require a certain measure of reliability, but the court has the discretion to require an appropriate level of formality. In *Gourley*, the court concluded that there was no due process violation in not requiring testimony or cross-examination at the hearing for a Protection Order.

The rationale for not mandating application of the Rules of Evidence in Protection Order hearings was to further public policy in creating simple, pro se-friendly procedures (for persons not represented by an attorney).

The court rule also provides that a judge can consider information from a “domestic violence database,” so long as it is disclosed to both parties at the hearing.

**Grounds for an ERPO:** When reviewing a petition for an ERPO under [RCW 7.105.110\(2a\)](#), the court may consider any relevant evidence including, but not limited to, any of the following:

- A recent act or threat of violence by the respondent against self or others, whether such violence or threat of violence involves a firearm;



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- A pattern of acts or threats of violence by the respondent within the past 12-months including, but not limited to, acts or threats of violence by the respondent against self or others;
- Any behaviors that present an imminent threat of harm to self or others;
- A violation by the respondent of a Protection Order or a no-contact order issued;
- A previous or existing ERPO issued against the respondent;
- A violation of a previous or existing ERPO issued against the respondent;
- A conviction of the respondent for a crime that constitutes domestic violence as defined in [RCW 10.99.020](#);
- A conviction of the respondent under [RCW 9A.36.080](#);
- The respondent's ownership of, access to, or intent to possess, firearms;
- The unlawful or reckless use, display, or brandishing of a firearm by the respondent;
- The history of use, attempted use, or threatened use of physical force by the respondent against another person, or the respondent's history of stalking another person;
- Any prior arrest of the respondent for a felony offense or violent crime;
- Corroborated evidence of the abuse of controlled substances or alcohol by the respondent; and
- Evidence of recent acquisition of firearms by the respondent.

**Information Regarding Firearms:** In addition to outlining the grounds for the ERPO, the petitioning law enforcement officer must also identify whatever information is available regarding firearms, such as the number, types, and locations of any firearms the petitioner believes to be in the respondent's current ownership, possession, custody, access, or control.

To meet this requirement, law enforcement agencies must conduct research and investigate firearms purchases or information regarding possession or access to firearms by the respondent. This may be another area where an unsworn declaration or statement from a witness with firearm knowledge regarding the respondent could be useful in the petition. (See Section 10: Accessing Firearms History.)



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**Good Faith Effort for Notice:** The law enforcement agency is also required to make a good faith effort to provide notice to an intimate partner, family, or household member of the respondent and to any known third party who may be at risk of violence.

The notice must state that the petitioner intends to petition the court for an ERPO or has already done so, and include referrals to appropriate resources, including behavioral health, domestic violence, and counseling resources. The petitioner must attest in the petition to having provided such notice or attest to the steps that will be taken to provide such notice.

**After-Hours Issuance:** Recognizing that because of an immediate risk of harm an ERPO may need to be issued outside of normal business hours, per [RCW 7.105.110](#) (2b) courts must allow law enforcement officers to petition after hours for a temporary ERPO using an on-call, after-hours judge, as is done for approval of after-hours search warrants.

🕒 The application for an after-hours ERPO should follow the same procedure established by the law enforcement agency for after-hours search warrant requests. Again, there is an ERPO petition and order form available online in either WORD or PDF.

**Court Hearings:** The officer declarant must plan to attend the ERPO court hearing where the court may examine under oath the petitioner, the respondent, and any witnesses they may produce, or in lieu of examination, consider sworn declarations of the petitioner, the respondent, and any witnesses they may produce; and ensure that a reasonable search has been conducted for criminal history records and civil protection order history related to the respondent.

The petitioning officer will be given notice of the hearing by the court, and because the officer is the moving party, no subpoena will be issued. It is incumbent on the officer to be aware of the court hearing and appear to present testimony and evidence accordingly.

During the hearing, the court will consider whether a behavioral health evaluation of the respondent is appropriate and, if so, may order an evaluation.

**Timely Service Required:** Given the desire to intervene as soon as possible due to the demonstrated risk and threat of harm, the service of an ERPO must be attempted by law enforcement within 24-hours of receiving the order from the court.

Given the heightened risks presented by the underlying facts and the nature of these orders, the respondent /restrained person may be uncooperative and present a significant ongoing danger to themselves or others, as well as to the law enforcement officers who serve the order.



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(The service of Protection Orders, including an ERPO, is covered in Section 9; the enforcement of orders is covered in Section 12.)

### ❖ RELATED TOOL-KIT REFERENCES

<a href="#">WS 001</a>	Order to Surrender and Prohibit Weapons	<i>Court form for Order to Surrender &amp; Prohibit Firearms (OTSPW)</i>
<a href="#">WS 300</a>	Motion for Surrender and Prohibition of Weapons	<i>Court form for petitioner to request OTSPW</i>
<a href="#">WS 301</a>	Order Re Motion for Surrender and Prohibition of Weapons	<i>Court form granting OTSPW</i>
<a href="#">XR Brochure</a>	Extreme Risk Protection Order Brochure	<i>ERPO information</i>
<a href="#">XR Brochure Adult</a>	Extreme Risk Protection Order – Respondent 18 Years and Over Brochure	<i>ERPO information</i>
<a href="#">XR Brochure18</a>	Extreme Risk Protection Order – Respondent Under 18 Years – Brochure	<i>ERPO information</i>
<a href="#">XR 101</a>	Petition for an Extreme Risk Protection Order	<i>Court form to petition for ERPO</i>
<a href="#">XRi 101</a>	Instructions for a Petition for an Extreme Risk Protection Order	<i>ERPO information</i>



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<a href="#"><u>XR 102</u></a>	Firearm Identification Worksheet	<i>Court form used to document possible firearms for ERPO</i>
<a href="#"><u>XR 105</u></a>	Law Enforcement and Confidential Information - Extreme Risk Protection Order	<i>Court form used to provide service information and background to LE for ERPO service</i>
<a href="#"><u>XR 112</u></a>	Proof of Service	<i>Court form completed and filed after ERPO is served</i>
<a href="#"><u>XR 121</u></a>	Temporary Extreme Risk Protection Order- Without Notice	<i>Court order for ex-parte ERPO</i>
<a href="#"><u>XRi 121</u></a>	Instructions for a Temporary Extreme Risk Protection Order – Without Notice	<i>ERPO information</i>
<a href="#"><u>XR 141</u></a>	Extreme Risk Protection Order	<i>Court form for ERPO</i>
<a href="#"><u>XRi 141</u></a>	Instructions for an Extreme Risk Protection Order	<i>ERPO Information</i>



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## 8. REMOVING FIREARMS AT SCENE OF DV CRIME

**Purpose:** This section is intended to assist law enforcement agencies with meeting the statutory duties required by the state's official response to Domestic Violence (DV) in chapter 10.99 RCW, by removing firearms and ammunition when responding to a DV situation because of the continued risks of harm when a DV perpetrator has access to firearms, regardless of whether firearms were used in the specific incident to which officers are responding.

This section includes recommendations for 911 telecommunicators and other law enforcement personnel in assisting the responding law enforcement officers with determining the nature of the DV call and whether firearms are involved. This policy also recaps the option for officers to seek an emergency NCO, OTSPW, or ERPO on behalf of a DV victim.

The power and duties of a peace officer responding to a DV situation are outlined in [RCW 10.99.030](#). "The purpose of this section is to recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide.

**Determining the Nature of the DV Call:** Telecommunicators at 911 Centers, as well as law enforcement agency personnel who may interact with callers seeking assistance (such as front desk, Records, or other agency personnel), are the first-line response in any DV call.

At a minimum, the following information should be obtained from the reporting party:

- Complete address location, including apartment, unit number, trailer, or other information;
- Nature of the relationship to determine if the incident is to be entered as a DV call type or whether an ERPO may need to be considered;
- Names and dates of birth of involved parties (if known);
- Weapons information, including firearms on the person, in the residence, at the location in a vehicle; accessible or secured; and specific types, descriptions, and locations of all firearms;
- If there are any injuries and if an EMS response is needed;
- If any children are in the residence;
- If any drugs or alcohol are involved;





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- If able, the context of the altercation and any pertinent history, including prior DV incidents, assault, threats, or Protection Order violations.

Telecommunicators or agency personnel receiving a DV call should try to keep the parties separated, if safe to do so. According to agency protocols, the incident should be dispatched to officers without delay.



It is recommended that while officers are responding, the telecommunicator conduct a records check of the involved parties to determine if there is any information related to firearms (such as a CPL), prior incidents or involvements with firearms, the presence of warrants or Protection Orders (including any order prohibiting the possession of firearms, even if the order is not between the parties at hand), and whether or not either party is prohibited by law from possessing a firearm.

This information should be relayed to the responding officers as soon as possible.

**Duty to Arrest:** Under [RCW 10.99.030](#), when a peace officer responds to a DV call and has probable cause to believe that a crime has been committed, the peace officer shall exercise arrest powers with reference to the criteria in [RCW 10.31.100](#).

The officer shall notify the victim of their right to initiate a criminal proceeding in all cases where the officer has not exercised arrest powers or decided to initiate criminal proceedings by citation or otherwise. The parties in such cases shall also be advised of the importance of preserving evidence.

**Complete Offense Report Required:** A peace officer responding to a DV call shall take a complete offense report including the officer's disposition of the case.

Pursuant to [RCW 10.99.035](#), each law enforcement agency shall make, as soon as practicable, a written record and shall maintain records of all incidents of DV reported to it. The records must be made identifiable by a departmental code for DV.

**Securing Firearms When Crime was Committed:** Under [RCW 10.99.030](#), a peace officer who responds to a domestic violence call *and has probable cause to believe that a crime has been committed shall:*

- Seize all firearms and ammunition the peace officer has reasonable grounds to believe were used or threatened to be used in the commission of the offense;
- Seize all firearms in plain sight or discovered pursuant to a lawful search; and
- Request consent to take temporary custody of any other firearms and ammunition to which the alleged abuser has access, until a judicial officer has heard the matter.



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- It is recommended that officers explain the purpose behind securing all firearms and ammunition at the scene of a DV related crime.

More DV victims are killed by firearms than by all other means combined. Those risks extend not only to the direct victim of the abuse, but also frequently to their children, the law enforcement officers dispatched to respond, and to the community at large in the form of community violence and mass shootings.

Removing firearms present at the scene of what is most commonly an emotionally charged situation between intimate partners, family members, or co-habitants can help to prevent subsequent DV and/or ready access to suicidal means.

Guidance for the tracking, storage, and reporting of firearms is covered in Section 13.

Officers should explain that firearms secured cannot be released until the provisions of [RCW 9.41.340](#) and [RCW 9.41.345](#) (including a background check) have been met (See Section 14: "Notification/ Return of Firearms".)

Because of the risk of additional harm to the victim, family, community or law enforcement when a DV perpetrator has continued access to firearms, in addition to securing any firearms at the scene of a DV crime, the peace officer is also required by state law to separate the parties and then inquire of the victim:

- If there are any firearms or ammunition in the home that are owned or possessed by either party;
- If the alleged abuser has access to any other firearms located off-site; and
- Whether the alleged abuser has an active CPL.

The inquiry should make clear to the victim that the peace officer is not asking only about whether a firearm was used at the time of the incident, but also under other circumstances such as whether the alleged abuser has kept a firearm in plain sight in a manner that is coercive, has threatened use of firearms in the past, or has additional firearms in a vehicle or other location.

Law enforcement personnel may use a pictorial display of common firearms to assist the victim in identifying firearms.

**Emergency NCO, OTSPW, or ERPO:** Under [RCW 10.99.040](#)(5a), because of concern about imminent risks before a court hearing is held (for example an incident has occurred during



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late night hours or on a weekend), a peace officer may request an emergency NCO, OTSPW, or ERPO from a judicial officer on behalf of the victim of an alleged act involving DV.

The request shall be made based upon the sworn statement of a peace officer and may be made in person, by telephone, or by electronic means. If the court finds probable cause to believe that the victim is in imminent danger based on an allegation of the recent commission of an act involving DV, the court shall issue an ex-parte (temporary) emergency NCO with an OTSPW or an emergency ERPO. (See Section 4: “Emergency, Ex-parte and Full Protection Orders”.)

**Document Firearms in DV Incident Report:** The statute requires that all information about firearms and CPL must be documented in the incident report, so that there is a complete record for future court proceedings. The incident report must be coded to indicate the presence of or access to firearms so that personal recognizance screeners, prosecutors, and judicial officers can address the heightened risk to victim, family, and peace officer safety due to the alleged abuser's access to firearms.

☑ It is recommended that agencies create a specific nature or type code in their Records Management System to flag DV incident reports when the suspect possesses or has access to firearms.

**Indemnification:** An appointed or elected public official, public employee, or public agency, or units of local government and its employees, are immune from civil liability for damages arising out of the seizure or lack of seizure of a firearm, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith.

⚠ It should be noted that law enforcement agencies may incur liability for failing to remove firearms at the scene of a DV crime pursuant to [RCW 10.99.030](#) and should consult their legal advisors for guidance.



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### ❖ RELATED TOOL-KIT REFERENCES

<a href="#"><u>WS 001</u></a>	Order to Surrender and Prohibit Weapons	<i>Court form for Order to Surrender &amp; Prohibit Firearms (OTSPW)</i>
<a href="#"><u>WS 300</u></a>	Motion for Surrender and Prohibition of Weapons	<i>Court form for petitioner to request OTSPW</i>
<a href="#"><u>WS 301</u></a>	Order Re Motion for Surrender and Prohibition of Weapons	<i>Court form granting OTSPW</i>



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## 9. PROCESSING, ENTRY OF ORDERS, AND CPL REVOCATION

**Purpose:** This section outlines the responsibilities and timelines required in state law to process a Protection Order, enter an order into law enforcement databases, and revoke any CPL issued to the respondent. Law enforcement agencies should consider the processing and entry of orders into computer systems as the first step in the service and enforcement of the order. Timely entry into law enforcement databases is key to swift intervention that will prevent acquisition of additional firearms and ensure temporary relinquishment of firearms already in the restrained person's possession.

**Receipt Starts the Clock:** Protection Orders are intended to provide a fast, efficient means to obtain legal protection to prevent and respond to abuse, violence, harassment, stalking, neglect, or other threatening behavior by perpetrators. There is a heightened risk of harm when a person is attempting to leave an abusive relationship and/or is reaching out to the court for protection.

Under state law, the service of a Protection Order must take precedence over the service of other documents by law enforcement unless they are of a similar emergency nature; when personal service is required by law enforcement, the first attempt must occur within 24 hours of receiving the order from the court.

The intent is to take action to implement the protections as ordered by the court to reduce harm as quickly as possible. The law enforcement agency receiving, processing, entering the order, and revoking any CPL is the critical first step.

🕒 It is recommended that the receipt, processing, entry of orders, and CPL revocation be directly assigned to specific personnel within the agency. Each of these steps are time sensitive.

Generally, these functions are handled by the Records function of a law enforcement agency, but this may vary depending on agency size, organization, and staffing. All agencies should establish clear procedures or checklists to make sure each step is accomplished in a timely manner.

A copy of the Protection Order, including Temporary Protection Orders, must be forwarded immediately by the clerk of the court, by electronic means, if possible, to the law enforcement agency specified in the order. However the order is transmitted from the court to the law enforcement agency, there should be a receipt system or other tracking documentation.



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- It is recommended that law enforcement agencies enter the handling of Protection Orders into their Records Management System as a call for service or law incident, just like any other measure of work for the agency.

Protection Orders create multiple levels of work across the agency with tight timelines.

Entering the Protection Order as a call for service allows the agency to track the progress of the order from receipt to service, provides a case or incident number for agencies to book surrendered firearms, allows the agency to run statistical data to capture and report the work involved, and provides a format for officers to complete written reports.

There are several informational steps required during the handling of a Protection Order which the law enforcement agency should be documenting in a police report. This includes documenting service attempts, information which must be provided back to the court, the collection of firearms, and any subsequent enforcement of the Protection Order which may be required.

**Entry of Protection Order Data:** Under the provisions of [RCW 7.105.325](#):

- The clerk of the court shall enter Protection Orders, including Temporary Protection Orders, into the statewide judicial information system on the same day such order is issued, when possible, but no later than the next judicial day.
- After entry, a copy of the Protection Order must be forwarded immediately by the clerk of the court (by electronic means, when possible) to the law enforcement agency specified in the order.
- Upon receipt of the order, the law enforcement agency shall immediately enter the order via ACCESS into WACIC/NCIC. The order must remain in WACIC/NCIC until the expiration date specified on the order. The expiration date of the order (unless permanent) will cause the order to auto-purge from WACIC/NCIC system; agencies will receive an electronic warning shortly prior to the auto-purge.
- When the court issues an order that prohibits the respondent from possessing or purchasing a firearm, the law enforcement agency shall also enter the order into WACIC/NCIC.
- The order must remain in each database for the period stated in the order, and the law enforcement agency shall only clear or cancel orders from the systems when the orders are expired or terminated. Orders are entered in WACIC/NCIC.



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- The information entered in WACIC/NCIC must include notice to law enforcement on whether the order was personally served, served by electronic means, served by publication, or served by mail. For this to occur, the agency must update the original WACIC/NCIC order entry to indicate when the order was actually served on the respondent. The confirmation of service provides proof that the respondent is aware of the provisions of the order under criminal penalties.
- Entry into WACIC/NCIC constitutes notice to all law enforcement agencies of the existence of the order, including that the order was served. The order is fully enforceable in any county in the state.
- If a law enforcement agency receives a protection order for entry or service, but the order falls outside the agency's jurisdiction, the agency may enter and serve the order or may immediately forward it to the appropriate law enforcement agency for entry and service and shall provide documentation back to the court verifying which law enforcement agency has entered and will serve the order.

🕒 It is recommended that the agency create a procedure, form, or electronic process to document that an order was forwarded to the correct law enforcement agency for entry and service; this form or procedure should also complete the notification to the court as to which law enforcement agency the order was forwarded to for service.

It is critical that the law enforcement agency make sure the order was forwarded without delay and can document it was received by the proper law enforcement agency, as well as notification of the court.

It is best practice to forward the order to the correct law enforcement agency for service, not send the order back to the court for re-issuance to the correct law enforcement agency (resulting in delay in service and firearms removal).

When creating a process to notify the court, the law enforcement agency will need to determine how the court is willing to accept the information (email with return receipt, electronic filing portal, or US mail). If the court has not accepted information electronically from the agency, the agency should meet with the presiding judge and/or court clerk to establish a protocol for electronic communication.

**Immediate Concealed Pistol License (CPL) Surrender:** Per [RCW 9.41.075](#), an OTSPW requires the respondent to also immediately surrender any CPL with the firearms, and then if the case continues beyond the initial 14-day ex parte order, requires law enforcement to **revoke** the respondent's CPL authorization.





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When the court enters a full Protection Order, Restraining Order, or No-Contact Order that includes an OTSPW, and the surrender of any concealed pistol license:

- The order must be served by a law enforcement officer;
- The designated law enforcement agency must immediately ensure the OTSPW is entered into WACIC/NCIC, and the revocation of any CPL is immediately forwarded to the Department of Licensing; and
- Law enforcement officers shall use law enforcement databases to assist in locating the party in situations where the protected person does not know where the party lives, or where there is evidence that the party is trying to evade service.

☑ It is recommended that law enforcement agencies create an on-line account with the Department of Licensing (DOL) through the “Firearms Online System” to electronically submit the CPL revocation to DOL. Not only does this system provide for immediate notice to DOL, but the on-line portal is direct, efficient, and creates a record of submittal.

With a Firearms Online System account, law enforcement agencies can: revoke CPLs; change dealer license status; view license history; print concealed pistol and firearms dealer licenses; and submit license fees to DOL.

If the receipt, processing, and entry of Protection Orders is handled by the agency’s Records function, then Records personnel should submit the CPL revocation to DOL when entering the permanent order into WACIC/NCIC as both are required to be done immediately.

**Return of Concealed Pistol License:** Per [RCW 9.41.345](#), a law enforcement agency may not return a CPL that has been surrendered to, or impounded by, the law enforcement agency for any reason to the licensee until the law enforcement agency determines the licensee is eligible to possess a firearm (WITH BACKGROUND CHECK) under state and federal law and meets the other eligibility requirements under [RCW 9.41.070](#).

A law enforcement agency must release a CPL to the licensee without unnecessary delay, and in no case longer than five business days, after the law enforcement agency determines the requirements of [RCW 9.41.070](#) have been met.

**Re-issuance of Revoked Concealed Pistol License:** The re-issuance of the revoked CPL may be pursued by the licensee upon expiration of the Protection Order, or upon the law enforcement agency’s receipt of “Order to Release Weapons” court form. (BACKGROUND WITH PRINTS, ETC.)



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- ☑ It is recommended that at the time of revocation of the CPL, the licensee be advised in writing of the requirement to re-apply for a CPL after the underlying Protection Order, ERPO, or OTSPW is no longer in effect.

**Preparing the Order for Service:** The processing and entry of the order is the first step for the law enforcement agency in preparing to serve and possibly later enforce the Protection Order.

It is critical to review the order and develop a plan for service before the actual service is attempted in the field.

- ☑ It is recommended that Records personnel (or the person responsible for processing orders) carefully review all the court documents for completeness, including whatever relevant information was noted on the Law Enforcement and Confidential Information (LECIF) form by the petitioner.

The LECIF is confidential, not a public record, and must not be served upon or shown to the respondent. It includes detailed information on the respondent; locations where the respondent can be served; known disabilities, hazards, and weapons of the respondent; the relationship between the parties and whether they are still co-habituating; details on the protected person and contact information (including address, email, and phone); details on any minors referenced in the order; a listing of other protected household members or adult children; and details about parents/guardians if the respondent is a juvenile.

Review of the LECIF should be conducted well before the service of the order, and the petitioner should be called (using the contact information listed on the form) to clarify any questions, concerns identified by the law enforcement agency, and/or to gauge the expected demeanor and potential reaction of the respondent upon service of the order.

If the surrender of firearms is ordered, such as in an ERPO or OTSPW, prior to service, the law enforcement agency should conduct a search of available records related to firearms purchases (WADOL or Pawn records) or ownership by the respondent, in addition to review of any firearms information in the Protection Order petition. (See Section 10: Assessing Firearms History.)



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### ❖ RELATED TOOL-KIT REFERENCES

<a href="#">WA DOL Firearms Resources for LE</a>	WA Department of Licensing Website	<i>Firearm resources for law enforcement page, including Firearms Online System</i>
<a href="#">PO 003</a>	Law Enforcement and Confidential Information Form (LECIF)	<i>Form completed by the petitioner to provide information, hazards, and service information about respondent</i>



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## 10. ASSESSING FIREARMS HISTORY

**Purpose:** The purpose of this section is to assist law enforcement agencies in assessing firearms ownership or possession history when creating a service plan and/or risk assessment prior to the service of a Protection Order with associated OTSPW or an ERPO. (Refer to Section 9: “Service of Orders”).

Under state law, if ordered to surrender firearms, the respondent must immediately surrender *all* firearms and dangerous weapons in the respondent's custody, control, or possession, as well as any concealed pistol license to law enforcement.

It is considered a best practice to assess the likelihood of the restrained person’s firearm access or possession, and their possible location, *before* serving the order. If firearms are not recovered during the initial service and the respondent retains possession or access to weapons, there is an increased risk of harm to the petitioner, law enforcement, and potentially the public while the firearms remain unsecured.

Determining a respondent’s firearms history can also assist officers and the court in determining whether the respondent has surrendered *all* firearms, dangerous weapons, and any CPL as required by the order. The enforcement of the order and/or the issuance of a search warrant to secure firearms may hinge on the respondent’s available firearms history.

**Accessing Firearm History:** Information related to firearms history (purchase, ownership, possession, access, delivery, or receipt) may be located with the following research:

- Conduct a careful review of the Protection Order petition filed by the petitioner (which may include details on firearms and locations).
- Review Attachment E of the Protection Order petition, which asks the petitioner specific questions about firearms and has example pictures to assist with identification.
- Review the LECIF details related to the respondent.
- Directly talk to the petitioner and any witnesses, ask about firearms, their location, when last seen and any access the respondent may have to them.
- Check for firearm purchase/transfer history and CPL through WADOL; there is also a CPL inquiry by state available through WACIC/NCIC.



Although law enforcement can document firearm information provided through ACCESS from WACIC/ NCIC, the actual database returns or printouts are considered confidential criminal justice records which cannot be shared outside of authorized law enforcement agencies, including petitioners, service providers, and courts.



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Access, use, and distribution of information within WACIC/NCIC databases is restricted by Criminal Justice Information Service (CJIS) protocols enforced by the Washington State Patrol and Federal Bureau of Investigation.

- Check Washington State DOL firearms licensing records through the law enforcement portal on the DOL “Firearms Online” website.



Law enforcement officers need to be aware that DOL records regarding firearm purchases and transfers are limited and may not capture all the firearms which the respondent has obtained, owns, or possesses.

- Check any available department of licensing and Washington State Patrol Firearm records. A search for the respondent’s available pawn history.
- Review local law enforcement incident reports, evidence/property entries, and/or notes in CAD related to the respondent, including firearm-related incidents or documentation of firearms.
- Review other law enforcement agency reports related to the respondent, such as those which may be available through the Law Enforcement Information Exchange (LINX).
- Review of any Protection Orders, current or past.
- Review available current or prior Lethality Assessments. Previous assessments should always be scanned and included in the report of previous contact.
- Check for state-issued hunting licenses and/or harvest history involving the use of a firearm.
- Review open-source social media posts by the respondent detailing purchase, ownership, possession, or access to weapons.



Failing to research firearm history could leave the respondent with access to firearms in violation of the court’s order, thus putting the petitioner, family members, other protected persons, the community, and law enforcement officers at risk because the firearms remain unsecured.

This information may also be critical to establish probable cause that the respondent has not surrendered all weapons as required. (See Section 12: “Enforcement of Orders”).



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### ❖ RELATED TOOL-KIT REFERENCES

<a href="#">Protection Order Petition- Attachment E</a>	<i>Detailed information and photos of firearms identified by petitioner</i>
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## 11. SERVICE OF ORDERS (including electronic service)

**Purpose:** The purpose of this section is to assist law enforcement agencies in meeting the specific steps and requirements as required by state law for the service of orders. This section outlines the requirements for the service of a Protection Order, ERPO, and OTSPW.

This section also provides recommendations to lessen risk to the law enforcement officers serving the orders, as well as the petitioner and respondent, all with the goal of obtaining full compliance with the order of the court as soon as possible.

The service of Protection Orders, OTSPWs, and ERPOs by law enforcement is one of the most important steps in preventing additional harm for survivors and the community. Ensuring the removal of firearms as soon as possible in conjunction with the respondent's comprehensive compliance with the order of the court are foundational aspects of harm reduction and lethality prevention, particularly during known periods of heightened risk.

**Procedures for Service by Law Enforcement:** The requirements for the service of orders, including Protection Orders, No-contact Orders, and Restraining Orders are encompassed in chapter 7.105 RCW.

**!** It should be noted that no policy can ever predict all the factors and circumstances facing a law enforcement officer during the performance of their duties. Officers are expected to make decisions and exercise reasonable discretion based on guidance from policies and procedures, in conjunction with their training, experience, and the assistance provided by a supervisor.

At all times, law enforcement officers must respect constitutional protections while serving and carrying out the order of the court.

**Preparing for Service/Risk Assessment:** As part of the processing and entry of orders (addressed in Section 9: "Processing, Entry of Orders and CPL Revocation"), it is critical to first conduct a thorough review of the order and develop a plan for service well before the actual service is attempted in the field.

Order service and enforcement should be prioritized based on risk; some may involve more risk for the protected person (petitioner), family members, community, and law enforcement, especially if there are concerns about access to firearms or dangerous weapons.





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There is also a heightened danger of harm during the period when the petitioner is attempting to leave a relationship and/or when turning to the court for protection, including increased lethality risk by the respondent upon their first notification that the petitioner has sought help from a court.



It is recommended that the serving officer and/or a supervisor carefully review and develop a Service Plan for all Protection Orders, but especially for cases involving an OTSPW or an ERPO. Agencies are encouraged to use a Service Risk Assessment Form to assist in evaluating any potential risk which may be faced by law enforcement, the petitioner, the respondent, and/or the community at the time of service.

Orders with the highest potential for risk should be given priority of service, which will generally be Protection Orders which include an OTSPW or an ERPO. The timing of the service and recovery of firearms should be coordinated to occur as expediently as possible based on the risk factors identified.

In the case of law enforcement officers or military members, the Service Plan should include coordinating with the respondent's agency or commanding officer to assist in serving the order and securing any firearms or dangerous weapons as required by the court. Federal and state law prohibit the possession of firearms when a valid Protection Order is in effect; there is no exception for law enforcement officers, military members, or any other profession where carrying a firearm is required by employment.

During service, officers are encouraged to explain the purpose of the order to the respondent, acknowledging the likelihood of increased emotions and risk during this period, whether related to DV allegations or concerns about suicide. Officers should be prepared to provide the respondent with references to DV, behavioral health, suicide prevention, and other community resources and services.

The respondent should be advised they have a right to due process in a hearing or hearings held before the court. The goal is to obtain cooperation from the respondent in temporarily relinquishing firearms or dangerous weapons, as well as comprehensive understanding and compliance with the order.

During service, officers are expected to use time, distance, and shielding in an effort to promote the safety of all involved.

It is recommended that high-risk orders and orders involving the surrender of firearms or dangerous weapons be served with at least two officers.



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Factors for consideration within the agency Service Risk Assessment include, but are not limited to:

- Prior incidents of assault or threats to harm or kill;
- Any type of physical violence, stalking or sexual harm toward the victim;
- Conviction or arrest involving violent acts, including prohibition on firearm possession;
- Presence or access to firearms or other dangerous weapons;
- History of alcohol or substance abuse;
- Violence against animals;
- Behavioral crisis indicative of dangerousness to self and/or others including suicidality.

Information to conduct this Risk Assessment can be found on the LECIF filled out by the petitioner, reading the petition outlining the basis of the order, calling the petitioner, reviewing related police reports or other involvements with the respondent, and conducting a criminal history check.

**!** The LECIF is confidential, not subject to public disclosure, and must not be served or shown to the respondent.

It includes detailed information on the respondent; locations where the respondent can be served; known disabilities, hazards, and weapons; the relationship between the parties and whether they are still co-habituating; protected person contact information (including address, email, and phone); details on any minors referenced in the order; a listing of other protected household members or adult children; and details about parents/ guardians if the respondent is a juvenile.

The LECIF may also contain information about the need for an interpreter.

Refer to Tool-kit at the end of this section for examples of a LECIF and Service Risk Assessment Form.

**⚙** It is recommended that prior to service, as part of the Service Plan the serving officer and/or a supervisor carefully review all the court documents for completeness, verify the order has been entered into WACIC/NCIC, and is pending service.

The service circumstances facing law enforcement are always factually specific.



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The Service Plan should include (at a minimum) reviewing whatever relevant information was noted on the LECIF by the petitioner, as well as details in the petition itself, prior incidents involving the parties, and a review of the agency's Risk Assessment Form.

In addition to a detailed review of the LECIF, as an officer-safety practice it is strongly encouraged that the serving officer call or contact the petitioner (using the contact information listed on the LECIF) to clarify any questions, concerns identified by the law enforcement agency, and/or to gauge the expected demeanor and potential reaction of the respondent upon service of the order.

In addition to reducing risk, additional information about the respondent's state of mind, firearm ownership or access, threats, substance use, and other related factors may assist with later securing a search warrant in the event there is a failure to comply when an order is served.

**Law Enforcement to Prioritize Order Service:** [RCW 7.105.155](#) outlines several required steps as to how and when the service of a Protection Order is to be completed by a law enforcement officer:

- Service of a Protection Order must take precedence over the service of other documents by law enforcement unless they are of a similar emergency nature;
- Where personal service is required, the first attempt at service must occur within 24 hours of receiving the order from the court unless an emergency situation renders the service infeasible;
- If an emergency situation prevents a first attempt at service within 24 hours, law enforcement must attempt service as soon as possible;
- If the first attempt is not successful, no fewer than two additional attempts should be made to serve the order, particularly for respondents who present heightened risk of lethality or other risk of physical harm to the petitioner or petitioner's family or household members; and
- All attempts at service must be documented on a Proof of Service Form and submitted to the court in a timely manner. Each attempt at service must be noted and reflected in computer aided dispatch records, with the date, time, address, and reason service was not completed. Note: The Proof of Service document includes specific prompts about respondent's demeanor when served, statements about firearms (e.g. denials despite purchase history or statements from petitioner about firearm possession), or any behaviors that suggest the restrained party may be evading service. These notes are useful to capture for judicial officer's consideration at the next hearing.



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As noted in Section 9, it is recommended that law enforcement agencies track the service of Protection Orders in their Records Management System as a call for service or law incident. This platform allows agency personnel and officers to document in a police or incident report the situations or circumstances which prevented the service of the order pursuant to the statutory requirements, as well as all the attempts at service.

For example, by law the first attempt at service must occur within 24-hours of receiving the order from the court “unless an emergency situation renders the service infeasible”. If there was an “emergency situation” which prevented the timely service, this should be documented in a written report.

Orders involving an associated OTSPW or an ERPO where firearms, dangerous weapons and any CPL need to be surrendered should be prioritized by the agency for service.

**Disability, Brain Injury, or Impairment:** Under [RCW 7.105.155\(6\)](#), if the law enforcement officer has knowledge that the respondent requires special assistance due to a disability, brain injury, or impairment, the officer shall make a reasonable effort to accommodate the needs of the respondent to the extent practicable without compromise to the safety of the petitioner.

As part of the Service Plan, officers need to anticipate if an interpreter is needed or use a telephonic interpreter service to assist in serving the order; the respondent’s knowledge of the order is required to enforce the order.

**Methods for Service of Orders:** The intent of the law is to minimize delays and the need for additional hearings, which can hinder access to justice and undermine judicial economy, as well as increased risk to petitioners and the community.

Under [RCW 7.105.150](#), several methods of service are authorized for Protection Order proceedings (including petitions, temporary Protection Orders, reissuances of temporary Protection Orders, full Protection Orders, motions to renew Protection Orders, and motions to modify or terminate Protection Orders). These service methods include:

- Personal service;
- Electronic service;
- Service by mail\*; and



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- Service by publication\*.

\*Generally, law enforcement officers will be conducting either personal service and/or electronic service, unless another service method is indicated by the court.

The court may authorize multiple methods of service and may consider use of any address determined by the court to be appropriate to authorize service that is reasonably probable to provide actual notice. By law, the court shall favor speedy and cost-effective methods of service to promote prompt and accessible resolution of the merits of the petition.

**?** For more information regarding other methods authorized for the service of orders, refer to [RCW 7.105.150](#).

**Personal Service by Law Enforcement:** Personal service (non-electronic) by law enforcement, is *required* for the following types of orders:

- Cases requiring the surrender of firearms, such as ERPOs and Protection Orders with OTSPW;
- Cases that involve transferring the custody of a child or children from the respondent to the petitioner;
- Cases involving vacating the respondent from the parties' shared residence;
- Cases involving a respondent who is incarcerated; and
- Cases where a petition for a vulnerable adult Protection Order is filed by someone other than the vulnerable adult.

**!** “Personal service” means that the respondent is directly provided or handed their copy of the order. The serving officer must be able to declare that the person served was the respondent, when they were served, where they were served, and what court documents were served.

Service is not completed until the Proof of Service Form, signed by the serving law enforcement officer, is filed with the court.

For example, personal service of an order by law enforcement for the circumstances above is required by law because of the need to secure surrendered firearms, exclude the respondent from a residence or location, and/or to transfer the custody of a child, each of which requires the presence of a uniformed peace officer to assure compliance.



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It is recommended that the serving law enforcement officer explain the provisions of the order and what steps need to be taken while the officer is present (such as the surrender of firearms and CPL if the order includes an OTSPW). An interpreter may be necessary. While acknowledging the feelings, concerns, and emotions of the respondent is recommended, the goal during service is to secure understanding, cooperation, and voluntary compliance with the court order.

The officer should also warn the respondent of the civil and criminal penalties for violation of the order, as well as appeal to the respondent's desire to avoid arrest and criminal prosecution.

**Separation of Parties Present at Time of Service:** Per [RCW 7.105.155](#), if the respondent is in a protected person's presence at the time of contact for service, the law enforcement officer must take reasonable steps to separate the parties prior to completing the service or inquiring about or collecting firearms.

When the order requires the respondent to vacate the parties' shared residence, law enforcement shall take reasonable steps to ensure that the respondent has left the premises and is on notice that the respondent's return is a violation of the terms of the order, and is subject to criminal and civil penalties, including arrest.

**!** In the Washington Supreme Court case of Washburn, *310 P.3d 1275 (2013)*, the police were held liable for the death of the petitioner when the officer serving the order failed to separate the parties and make sure the respondent left the home. The officer also did not review the service paperwork and did not have an interpreter present, even though it had been noted on the service form. The court found law enforcement negligent in the service of the Protection Order.

**Service of Order Copy by Law Enforcement:** Per [RCW 7.105.465](#), for a Protection Order to be criminally enforceable, the officer "shall attempt to determine whether the respondent knew of the existence of the protection order." (See Section 12: "Enforcement of Orders".)

If the officer determines that the respondent did not, or probably did not know about the Protection Order and the officer is provided a current copy of the order (such as the copy in the possession of the petitioner) the officer *shall* serve the order on the respondent if the respondent is present.

If the respondent is not present, the officer shall make reasonable efforts to serve the respondent with a copy of the order. If the officer does serve the petitioner's copy of the order, the officer shall provide a receipt indicating that the petitioner's copy was used for service.



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**Service of OTSPW or ERPO by Law Enforcement:** Protection Orders may also include an OTSPW.

In the case of an ERPO, the order itself requires the surrender of firearms and any CPL. Officers should be aware that violation of an ERPO, including the refusal to surrender firearms as ordered, is a criminal offense.



It is recommended that during the creation of the Service Plan, officers conduct research to facilitate the most expeditious and complete recovery of firearms and any CPL as possible, as ordered by the court. Officers should be aware that the court may have limited information about what firearms or dangerous weapons the respondent has in their possession or may be accessible to them.

This can be accomplished through conducting records checks on firearm purchases or transfers (See Section 10: "Assessing Firearms History") as well as calling the petitioner to get specific information on firearms, their location and when last seen. As the respondent is required to surrender *all firearms*, not just those listed in the order, it is helpful for officers to have as much information about known or possible firearms to encourage the respondent to cooperate with the OTSPW or ERPO.

*The goal is voluntary compliance in surrendering all firearms and any CPL as required by the court, as well as obeying all the provisions of the Protection Order.*

Generally, the petitioner will have provided some information to the court as to the number, types, and locations of firearms the respondent may possess or access in requesting the order but having a conversation between the serving officer and petitioner can provide the most up-to-date and accurate information about weapons in the creation of the Service Plan, as well as any Service Risk Assessment.

The following procedures should be followed by law enforcement when serving an OTSPW or ERPO:

- Follow the directives as provided in the court order.
- Although the order may identify specific firearm brands and models to be surrendered, the serving officer should also ask or call the petitioner separately for all firearms to which the respondent has access to or is in possession of, in addition to any firearms specifically listed in the order.
- As part of the Service Plan, the officer should review any available information that would identify additional firearms owned or possessed by the respondent, including the police reports leading to or related to the issuance of the order.





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- *All firearms* must be surrendered by the respondent upon service, even those not specifically listed in the order. Because the court may not be aware of all firearms which the respondent possesses or has access to, the court's order may say "including but not limited to" the identified firearms.
- Upon service, the officer should advise the respondent that the court has issued an order, the order is effective upon service, and that the order requires the immediate surrender of *all firearms* in their custody, control, or possession, as well as any CPL issued in any state.
- Officers must conduct any search as permitted by law for such firearms, dangerous weapons, or CPL, and take possession of all firearms, dangerous weapons, and CPL that are surrendered, observed in plain sight, or discovered pursuant to a lawful search.



It is recommended that officers ask the respondent if they consent to a search so that the court order to surrender all firearms, dangerous weapons, and any CPL can be completed (refer to specific agency consent-to-search protocols).

- If the order is temporary or ex-parte order, officers should explain to the respondent that this is a temporary court order, law enforcement will retain the firearms for safe storage, and the respondent may contest the order at the hearing which is scheduled and noted on the copy of the order. Due process will be afforded to all parties by the court.
- If the respondent denies possession of firearms or reports that their firearms were transferred to another party or sold before the court's order, officers should conduct basic investigative steps to help verify or disprove respondent's claims, including contacting the party to whom the respondent claims to have transferred the firearms. Respondents are not permitted to transfer or sell firearms after a court order has been issued. (Note: [RCW 9.41.113](#) outlines the requirements for lawful firearms sales, transfers, and required background checks.)
- The respondent should complete a Proof of Surrender Form to account for all firearms that have been sold or transferred prior to the court order.
- Law Enforcement should obtain a statement if possible, and a signed "Declaration: No Weapons to Surrender" if the respondent asserts that they have never owned or possessed a firearm or CPL in this or any other state. Note on the Proof of Service if the respondent asserts they possess no weapons or any CPL.
- During the service of an ERPO, if there is probable cause to believe that the respondent still has custody, control, or possession of other firearms, law enforcement should consider application for a search warrant. (See Section 12: "Enforcement of Orders".)



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- During the service of an OTSPW, if there is probable cause to believe that the respondent still has custody, control, or possession of other firearms, law enforcement should immediately file a petition with the court to request a compliance hearing or consider completing a Declaration of Law Enforcement about Weapons Surrender. (See Section 12: “Enforcement of Orders”.)
- For victim, community, and officer safety, every lawful effort should be made to obtain any and all firearms at the time of the order service, rather than asking the respondent to surrender firearms to the agency at a later date or location.
- To reduce the risk of lethality and harm, if the respondent is not physically located where their firearm(s) and any CPL are located, whenever practicable, law enforcement should transport or follow the respondent to retrieve all firearms and any CPL.
- The serving officer will provide a copy of a receipt for all surrendered firearms and CPL to the respondent for their records. (See Court pattern form “Receipt for Surrender Firearms, Other Dangerous Weapons and Concealed Pistol License,” a copy of which will also be filed with the court according to agency procedures.) The receipt must be detailed, including make, model, caliber, and serial number (at a minimum).
- Law Enforcement should inventory, photograph, and book the firearms into the property room according to agency procedures (See Section 13: “Real-time Tracking, Storage and Reporting of Firearms”).
- Complete and sign the Proof of Service Form and be sure to mark all the appropriate boxes for the surrender of firearms. Every box must be marked for each document that was required to be served, or the court may find that the service was incomplete and will require further service of the order.
- Attempt to notify the petitioner that the order was served (phone or email contact information should be on the LECIF).
- Immediately complete a police or incident report documenting surrender of firearms (or suspected non-compliance with the order to surrender firearms).
- Using the process established by the agency, the serving officer will submit the completed police or incident report, Proof of Service Form, any statements obtained, the Receipt for Surrendered Firearms, Other Dangerous weapons and Concealed Pistol License Form, any Proof of Surrender or Declaration: No Weapons to Surrender Form (if respondent has provided copies) so that they can be filed with the court as required by law.



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- ✔ It is recommended that law enforcement agencies have a trackable process with date stamp, read receipt, or other verification that the court has received the Proof of Service documents when filed.

**Service By Third Party:** As noted, most Protection Orders must be served by law enforcement, including ERPOs or Protection Orders with an attached OTSPW. However, in some other circumstances, law enforcement should be aware the petitioner may decide to have the respondent served by a third party who is not a party to the action, is a competent witness 18 years of age or older, and can provide sworn proof of service to the court as required.

**When Service is Not Necessary:** Under [RCW 7.105.150\(4\)](#), if an order entered by the court states that the respondent appeared before the court, (either in person or remotely) the necessity for further service is waived and proof of service of that order is not necessary. This includes cases where the respondent leaves the hearing before a final ruling is issued or signed, as well as times when the material terms of the order have not changed.

- ✔ It is recommended law enforcement agency administrators coordinate with local courts if orders are being sent to law enforcement for service when not required by statute.

**Law Enforcement Stand-By to Recover Possessions:** Under [RCW 7.105.320](#), upon the request of the petitioner in a Protection Order, the court may direct a law enforcement officer to accompany the petitioner and assist in placing the petitioner in possession of those items indicated in the order or to otherwise assist in the execution of the Protection Order.

The order must list all items that are to be included with sufficient specificity to make it clear which property is included. These orders also must list the appropriate law enforcement agency to execute, serve, or enforce the order; however, any appropriate law enforcement agency should act where assistance is needed, even if the agency is not specifically named in the order, including assisting with the recovery of firearms.

- ✔ It is highly recommended if a respondent shows up at a law enforcement agency to surrender firearms or weapons as ordered, that the agency accept the firearms, even if they are not the designated serving agency, the respondent is not a resident of their jurisdiction, and/or until verification of compliance with the order can be determined.

Law enforcement should take every opportunity to remove barriers, encourage immediate compliance, and help to prevent frustrating a respondent when they are attempting to voluntarily comply. Sending a respondent to a different location, date or time to surrender causes an unnecessary delay in securing the firearms to reduce



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immediate risk, and may cause the respondent to give up in trying to comply.

Once the surrendered firearms are secured, the accepting agency should coordinate with the designated serving agency to hold them or transfer custody.

When the respondent is ordered to vacate the residence or other shared property, the respondent may be permitted by the court to remove personal clothing, personal items needed during the duration of the order, and any other items specified by the court, while a law enforcement officer is present.

Where orders involve surrender of firearms, dangerous weapons, and CPLs, officers should prioritize those items must be secured and accounted for in a manner that prioritizes safety and compliance with court orders.



It is recommended any actions taken by law enforcement during a requested court directed stand-by should be documented in a police or incident report, including any associated body camera footage.

Any assignment of property must be specifically noted by the court in the order; officers are not expected nor authorized to make determinations for the division of property or assets. The parties should be advised any such disputes must be resolved by the court.

**When Electronic Service is Authorized:** In cases where personal service is required, after two unsuccessful attempts at personal service, service is permitted by electronic means as outlined in [RCW 7.105.150](#) (1b).

Service by electronic means includes service by email, text message, social media applications, or other technologies.



As noted above in “personal service by law enforcement” there are some Protection Orders, including ERPOs and OTSPWs, where a law enforcement officer will need to personally serve the respondent and collect the surrendered firearms and CPL; therefore, these orders do not initially lend themselves to electronic service.

However, once all firearms and CPLs have been surrendered and verified by the court, or there is evidence the respondent does not possess firearms; the restrained party has been vacated from the shared residence; the custody of the child or children has been transferred per court order; or the respondent is no longer incarcerated, then subsequent motions and orders may be served electronically.



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- It is recommended that law enforcement agencies create a process to regularly serve orders electronically when allowed to do so by law. The Legislature added the option of electronic service by civilian agency personnel to help make the best use of available law enforcement staffing and work hours for serving Protection Orders so that officers can focus their efforts on personally serving the Protection Orders with an OTSPW or an ERPO where the risk determined by the court requires the immediate surrender of firearms, dangerous weapons, and any CPL to law enforcement at the time of service. Additionally, the legislature recognized that electronic service could result in more effective service when the respondent might otherwise not have a current or known physical address.

**Electronic Service By Third Party:** By statute, service by electronic means must be made by a law enforcement agency; however in some other circumstances, the petitioner can decide to have the respondent served by a third party who is not a party to the action, is a competent witness 18 years of age or older, and can provide sworn proof of service to the court as required.

Court authorization for electronic service is not required except in cases outlined in “personal service required” listed above.

**Procedures for Electronic Service by Law Enforcement:** For law enforcement to facilitate electronic service the following statutory provisions apply per [RCW 7.105150\(b1\)](#):

- The petitioner must provide the respondent's email address, number for text messaging, and username or other identification used for social media applications or other technologies on the LECIF.
- The petitioner must attest the electronic contact information is legitimate, current, or last known contact information for the respondent.
- Electronic service is completed by agency staff transmitting copies of the petition and any supporting materials filed with the petition, notice of hearing, and any orders, or relevant materials for motions, to the respondent at the respondent's electronic address or the respondent's electronic account associated with email, text messaging, social media applications, or other technologies.
- Verification of notice is required and may be accomplished through read-receipt mechanisms, a response by the respondent, a sworn statement from the person who effected service verifying transmission and any follow-up communications such as email or telephone contact used to further verify, or an appearance by the respondent at a hearing.



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- Service is completed on the date of transmission for electronic service.

**?** There are electronic service platforms and software available by subscription which the law enforcement agency may want to consider using to complete electronic service. These platforms not only create a “read record” but can also consolidate the numerous pages of the order, petition, and other required documents into a format that can be more easily transmitted by text or email.

- Sworn Proof of Service must be filed with the court by the person who effected service.

**✔** It is recommended that the serving law enforcement personnel attempt to verify and document that the respondent received the order electronically because knowledge is a critical factor for any future enforcement of the order. (See Section 12: “Enforcement of Orders”.)

Determining knowledge can be accomplished through follow-up emails or phone call(s) asking if the respondent received the order and if they had any questions. There may also be circumstances where the respondent would rather be served electronically than to have uniformed law enforcement officers arrive at their residence, work, school, or place of business.

In any case, the serving officer should document the interaction with the respondent in the police or incident report as verification of successful electronic service and provide a written record (such as the incident report for criminal cases) to the court with the Proof of Service should the question of knowledge later arise regarding order violation. (See Section 9: “Processing and Entry of Orders”.)

**Filing the Proof of Service Form:** Proof of service must be submitted to the court on the Proof of Service Form. The form must include the date and time of service and each document that was served, along with information to the court regarding the situation encountered by law enforcement at the time of service. It is critical that all the applicable boxes are checked on the form or the court may require other attempts at service to correct it.

**⚠** Per [RCW 7.105.155](#), the serving law enforcement officer is also *required to provide service details to the court*, such as the conduct of the respondent at the time of service, threats made, or the avoidance of service, as well as any statements regarding possession of firearms, including any denials of ownership despite positive purchase history, active concealed pistol license, or sworn statements in the petition that allege the respondent's access to or possession of firearms.

**✔** As previously noted, it is recommended that law enforcement agencies track



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the service of Protection Orders in their Records Management System as a call for service or law incident. This platform allows officers to complete incident reports detailing each step of the service process, including a written narrative documenting the conduct of the respondent at the time of service, and any associated body camera footage (which should then be attached or transmitted to the court with the Proof of Service Form).

Completing a police report of the interaction is more conducive to law enforcement record management and record searches than just making notes on the Proof of Service Form (which is retained by the court). Information about the circumstances of service entered into the agency's Record Management System can also be useful to other law enforcement officers when serving subsequent orders or investigating order violations.

For example, when a temporary Protection Order is being served by a law enforcement officer, and the respondent is not cooperative, makes threats against the petitioner (or law enforcement), and/or indicates they will not comply with the provisions of the order, this information needs to be clearly documented and relayed back to the court with the Proof of Service Form. During the hearing for the full order, the court will likely consider these actions by the respondent when considering making the temporary order a full order (one or more years) or a granted permanent order. (never expires).

The observations and any related body camera footage from the law enforcement officer during the service of an order could end up being critical to the petitioner's underlying request to the court for protection. This conduct may also rise to the level of arrest and criminal prosecution of the respondent.

**Notice to Petitioner Within Ten Days (Not Served):** By statute, if service cannot be completed within the first ten (10) calendar days, the law enforcement officer must notify the petitioner. (The petitioner's contact information should be available on the LECIF).

Law enforcement must continue to attempt to complete service unless otherwise directed by the court.

If the petitioner does not provide a service address for the respondent or there is evidence that the respondent is evading service, the law enforcement officer must use law enforcement databases to assist in locating the respondent.



Documenting all of these statutorily required steps is why it is recommended that agencies use their RMS system to record the service or attempted service of orders.





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It also provides a platform for a narrative report to detail the efforts of the serving law enforcement officers, as well as any information about the respondent, including any evidence the respondent is avoiding service.

Notification to the petitioner can be completed by the officer, or others within the agency such as Records personnel, according to agency protocols.

**Service Attempts Not Successful:** If attempts at service were not successful, the Proof of Service Form or the form letter showing that the order was not served by law enforcement, *and stating the reason it was not served*, must be returned to the court by the next judicial day following the last unsuccessful attempt Listing out the date and time of every attempt is important so the court can consider alternate service options, as allowed by law.

**!** Per [RCW 7.105.155](#), each attempt at service must be noted and reflected in computer aided dispatch records, with the date, time, address, and reason service was not completed. (Listing out the date and time of every attempt.)





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### ❖ RELATED TOOL-KIT REFERENCES

<a href="#">PO 003</a>	Law Enforcement and Confidential Information Form (LECIF)	<i>State court pattern form completed by the petitioner to provide information, hazards, and service information about respondent</i>
<a href="#">PO 003R</a>	Law Enforcement and Confidential Information – Restrained Person (LECIFR)	<i>State court pattern form completed by respondent to provide LE information</i>
<a href="#">IACP Model Policy</a>	IACP Model Policy: DV by Police Officers	<i>National model policy for incidents of DV involving police officers</i>
<a href="#">PO 030</a>	Temporary Protection Order and Hearing Notice	<i>State court pattern form for temporary (ex-parte) Order</i>
<a href="#">PO 040</a>	Protection Order	<i>State court pattern form for Protection Order</i>
<a href="#">PO 004</a>	Proof of Service (RTS)	<i>State court pattern form for return of service</i>
<a href="#">WS 001</a>	Order to Surrender and Prohibit Weapons	<i>State court pattern form for OTSPW</i>
<a href="#">WS 100</a>	Proof of Surrender	<i>State court pattern form for respondent to declare firearms and CPL surrendered</i>
<a href="#">WS 101</a>	Receipt for Surrender Firearms, Other Dangerous Weapons and Concealed Pistol License	<i>State court pattern form for LE receipt of surrendered firearms (respondent must file copy with the court)</i>
<a href="#">WS 102</a>	Declaration: No Weapons to Surrender	<i>State court pattern form for respondent to declare no weapons or CPL</i>



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## 12. ENFORCEMENT OF ORDERS

**Purpose:** The purpose of this section is to assist law enforcement agencies in meeting the statutory requirements for the enforcement of a Protection Order, ERPOs and OTSPWs.

The Legislative intent indicates: “Because of the heightened risk of lethality to petitioners when respondents to protection orders become aware of court involvement and continue to have access to firearms, and the frequency of noncompliance with court orders prohibiting possession of firearms, law enforcement and judicial processes must emphasize swift and certain compliance with court orders prohibiting access, possession, and ownership of all firearms.”

As outlined in Section 3: “Types of Protection Orders”, in addition to the six types of Protection Orders, there are also NCO and Restraining Orders encompassed in various statutes; the violation and enforcement of these are all covered in chapter 7.105 RCW.

As with the mandatory arrest under the state statutes for response to DV, law enforcement officers are required to arrest for violations of specific criminal provisions within Protection Orders. Once a respondent has participated in a hearing, if they are prohibited, it is also a felony to own, access, have in their custody, control, or possession, or receive any firearm while a Protection Order is in effect.

Respondents who violate an order are subject to criminal penalties as well as being held in contempt by the court. Some sections of Protection Orders are not subject to criminal enforcement, so it is important for law enforcement officers to carefully review and understand the different provisions at issue.

**Criminal Order Provisions (except Antiharassment Orders or ERPOs):** Per [RCW 7.105.450\(1a\)](#), *once the respondent knows of the order it is a gross misdemeanor or felony crime\** to violate any of the following provisions of a Protection Order:

- The *restraint provisions* of the order which prohibit acts or threats of violence against or stalking of a protected party;
- The *restraint provisions* prohibiting contact with a protected party;
- A *provision excluding* the person from a residence, workplace, school, or daycare;
- A *provision prohibiting* the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, a protected party's person, or a protected party's vehicle;
- A *provision prohibiting interfering* with the protected party's efforts to remove a pet



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owned, possessed, leased, kept, or held by the petitioner, the respondent, or a minor child residing with either the petitioner or the respondent; or

- A provision of a Foreign Protection Order or a Canadian Domestic Violence Protection Order *specifically indicating that a violation will be a crime.*

**?** For additional information regarding mandatory arrest for Domestic Violence crimes, refer to [RCW 10.31.100\(2\)](#).

**Felony Violations of Protection Orders\*:** Per [RCW 7.105.450\(4\)\(5\)](#), under the following circumstances any violation of a Protection Order becomes a *class C felony* for:

- Any assault that is a violation of a Protection Order as listed above (and the assault is not a first- or second-degree felony assault);
- Any conduct in violation of an order that is reckless and creates a substantial risk of death or serious physical injury to another person; or
- Any violation of a Protection Order if the offender has at least two previous convictions for violating the provisions of any of the orders listed above. *It should be noted that previous convictions may involve the same victim or other victims where the respondent was convicted of violating a Protection Order.*

**✓** It is recommended that prior to booking for any Protection Order violation, officers check the criminal history of the respondent for any previous Protection Order violation convictions.

**Mandatory Arrest by Law Enforcement (except Antiharassment Order or ERPO):** Under [RCW 7.105.450\(2\)](#), “a law enforcement officer shall arrest without a warrant and take into custody a person whom the law enforcement officer has probable cause to believe has violated” the above listed criminal *restraint, prohibition or interference* provisions within the following orders:

- Domestic Violence Protection Order;
- Sexual Assault Protection Order;
- Stalking Protection Order;
- Vulnerable Adult Protection Order;
- An order is granted under chapter 9A.40, 9A.44, 9A.46, 9A.88, 9.94A, 10.77, 10.99, 26.09, 26.26A, or 26.26B RCW;



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- Foreign Protection Order as defined in [RCW 26.52.020](#); or
- Canadian Domestic Violence Protection Order as defined in [RCW 26.55.010](#).

**!** It is critical that officers review the criminal enforcement provisions of any Protection Order. There may be sections of an order, especially those encompassed within a Restraining Order related to a divorce or child custody action that are not criminally enforceable, such as the assignment of financial assets, payment of attorney fees, childcare decisions, and other such issues in dispute.

In those circumstances, the only enforcement is for the petitioner to seek relief through a civil contempt motion in court.

*For a provision of a Protection Order to be criminally enforceable, it must “restrain” the respondent from acts or threats of violence, contacting, or stalking of the protected party; “exclude” the respondent from a residence, workplace, school, daycare or coming within a specified distance of the protected person or location; or prohibit “interfering” with obtaining children or pets.*

Within the state’s official response to DV, [RCW 10.99.055](#) includes a reference to the enforcement of orders: *“A peace officer in this state shall enforce an order issued by any court in this state restricting a defendant’s ability to have contact with a victim by arresting and taking the defendant into custody, pending release on bail, personal recognizance, or court order, when the officer has probable cause to believe that the defendant has violated the terms of that order.”*

During the course of the investigation for a violation of a Protection Order, officers should:

- Review the criminally enforceable provisions of the order;
- Determine the respondent’s knowledge of the order, which is reflected in the Proof of Service being completed or respondent’s attendance at the hearing when the protection order was issued (See Section 9: “Service of Orders”);
- Collect associated evidence (such as witness statements, video footage, cellular phones, social media posts or contacts);
- Measure to verify distances (if the respondent was excluded from a residence or other location by a certain distance, which is typically 1,000 feet);
- Interview the suspect regarding the alleged order violation;
- Download and save any related body camera footage of the victim, suspect, and scene;



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and

- See that the suspect is booked or held in custody according to agency protocols.

**⚠** It is critical that the officers complete their primary investigation and associated arrest report as soon as possible because the law requires that any defendant arrested for violation of an order must appear before a judge within one judicial day after the arrest. Appearance is mandatory and cannot be waived.

In addition to criminal penalties, the respondent may also be subject to contempt of court sanctions by any court in the county or municipality where the petitioner or respondent reside at the time of the alleged violation.

**?** For more information on how a petitioner or law enforcement officer can file an affidavit to initiate a contempt hearing, refer to [RCW 7.105.450\(7\)](#).

**Determining Respondent Knowledge of the Order:** Per [RCW 7.105.465\(2\)](#), for a Protection Order to be criminally enforceable, the officer *“shall attempt to determine whether the respondent knew of the existence of the protection order.”* This is usually accomplished through the Proof of Service filed with the court (see Section 9: “Service of Orders”) or respondent’s attendance at the hearing when the Protection Order was issued.

Per the statute, if the officer determines that the respondent did not, or probably did not, know about the Protection Order and the officer has a current copy of the order (such as the petitioner’s copy), the officer *shall* serve the respondent, if present.

If the respondent is not present, the officer *shall* make reasonable efforts to serve a copy of the order. (If the officer serves the respondent with the petitioner's copy, the officer shall provide a receipt indicating that the petitioner's copy was served on the respondent).

After the officer has served the order on the respondent, the officer *shall* enforce prospective compliance with the order.

**⚠** Presentation of an unexpired, certified copy of a Protection Order with proof of service is sufficient for a law enforcement officer to enforce the order regardless of the presence of the order in WACIC/ NCIC.

Effective in January, 2025, the state Administrative Office of the Courts began implementation of the “[Hope Card](#)” program, which provides case number, petitioner, and respondent identification information for a Protection Order on a wallet sized card that law enforcement can use to access the order (so the Petitioner no longer has to carry a hard-copy of the order to provide law enforcement when there is a possible violation).



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**Criminal Violation of Antiharassment Protection Orders:** Under [RCW 7.105.455](#), once the respondent or restrained person knows of the order (See Section 9: “Service of Orders”) a “willful disobedience” by a respondent age 18 years or over of any of the following restraint, prohibition, and interference provisions of an Antiharassment Protection Order issued under this chapter is a gross misdemeanor:

- The *restraint provisions* prohibiting acts or threats of violence against, or unlawful harassment or stalking of a protected party, or restraint provisions prohibiting contact with a protected party;
- A *provision excluding* the person from a residence, workplace, school, or daycare;
- A *provision prohibiting* the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, a protected party's person, or a protected party's vehicle; or
- A *provision prohibiting interfering* with the protected party's efforts to remove a pet owned, possessed, leased, kept, or held by the petitioner, respondent, or a minor child residing with either the petitioner or the respondent.

“Willful disobedience” refers to the intentional and deliberate violation of a court order, showing a clear intent to defy the court’s authority.

Officers should be aware that for violations of Antiharassment Protection Orders, there is no mandatory arrest provision.

**⚠** It is critical that officers complete their primary investigation and associated arrest report as soon as possible because the law requires that any defendant arrested for violation of an order must appear before a judge within one judicial day after the arrest. Appearance is mandatory and cannot be waived.

Any respondent *under the age of 18 years* who willfully disobeys the restraint, prohibition, and interference provisions of an Antiharassment Protection Order issued under this chapter may, in the court's discretion, be found in contempt of court.

For juvenile respondents, there is no criminal enforcement provision by law enforcement.

**Enforcement of an Extreme Risk Protection Order:** Under [RCW 7.105.340](#), at the time the law enforcement officer is serving an ERPO, the officer “*shall request that the respondent immediately surrender all firearms in the respondent's custody, control, or possession, and any concealed pistol license issued, and conduct any search permitted by law for such firearms*”.



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**!** Depending on the specific facts and observations available to officers at the time of service there may be articulable exigencies created by the heightened risk to victim(s), family, community, and officer safety in these periods of volatility. Officers should, if feasible, consult with an on-duty supervisor in such situations, and are encouraged to consult with the police legal advisor for further guidance if exigency necessitates securing firearms without consent or a search warrant.

Any person who has in their custody or control, accesses, purchases, possesses, or receives, or attempts to purchase or receive, a firearm with knowledge that they are prohibited from doing so by an ERPO is guilty of a gross misdemeanor.

The law enforcement officer must take possession of all firearms belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search. However, an ERPO does not by itself grant officers the authority to enter homes or protected spaces to collect firearms or effect an arrest. Officers should either request consent or seek an ERPO search warrant.

As part of the Service Plan and Service Risk Assessment conducted by the agency (See Section 9: "Service of Orders"), officers are expected to use time, distance, and shielding to encourage voluntary compliance with the order by the respondent for the surrender of all firearms, dangerous weapons, and any CPL.

**ERPO Search Warrant Authorized:** Under [RCW 7.105.340\(4\)](#), upon the sworn statement or testimony of the petitioner or of any law enforcement officer alleging that the respondent has failed to comply with the surrender of firearms as required by an order issued under this chapter, the court shall determine whether probable cause exists to believe that the respondent has failed to surrender all firearms in the respondent's possession, custody, or control.

If probable cause for a violation of the order exists, the court shall issue a warrant describing the firearms and authorizing a search of the locations where the firearms are reasonably believed to be and the seizure of any firearms discovered pursuant to such search.

**✓** It is recommended that once the serving officer has probable cause the respondent has failed to comply with an ERPO (such as a refusal to surrender all firearms or weapons), and the officer is lawfully present, the suspect be arrested for the gross misdemeanor ERPO violation under [RCW 7.105.460\(2\)](#) and an ERPO search warrant be sought to secure all firearms.

There also may be circumstances where the person is no longer present with the firearms, such as being detained and transported to a treatment facility pursuant to the Involuntary Treatment Act, but officers should still seek an ERPO search warrant to lawfully enter the premises to secure all firearms, dangerous weapons, and CPL.





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An ERPO also prevents the respondent from purchasing or acquiring additional firearms for the duration of the order.

**Enforcement of Order to Surrender and Prohibit Weapons:** Pursuant to [RCW 9.41.801\(2\)](#), a law enforcement officer serving a Protection Order, No-contact Order, or Restraining Order that includes an OTSPW shall inform the respondent that the order is effective upon service and *“the respondent must immediately surrender all firearms and dangerous weapons in the respondent's custody, control, or possession and any CPL, and conduct any search permitted by law for such firearms, dangerous weapons, and concealed pistol license”*.

The law enforcement officer shall take possession of all firearms, dangerous weapons, and any concealed pistol license belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search. Officers should conduct any search permitted by law and should also request consent for a search. (Refer to specific agency consent-to-search protocols.)

An OTSPW does not by itself, grant officers the authority to enter homes or protected spaces to collect surrendered firearms or effect an arrest.

**⚠** Depending on the specific facts and observations available to officers at the time of service there may be articulable exigencies created by the heightened risk to victim(s), family, community, and officer safety in these periods of volatility. Officers should, if feasible, consult with an on-duty supervisor in such situations, and are encouraged to consult with the police legal advisor for further guidance if exigency necessitates securing firearms without consent or a search warrant.

Under [RCW 9.41.801](#), if a respondent refuses to surrender firearms, dangerous weapons and/or CPL, they should be advised that possessing, accessing, or acquiring a firearm or CPL is prohibited and they are subject to contempt of court sanctions, which can include the court issuing a warrant for their arrest.

**OTSPW Compliance Hearing:** For any case where the court has indication that the respondent has in the respondent's possession, custody, or control firearms, dangerous weapons, or a CPL, a compliance review hearing must be held.

**✓** It is recommended that once the serving officer has reasonable suspicion the respondent is not in full compliance with the OTSPW, the officer should immediately file a “Declaration of Law Enforcement about Weapons Surrender” Form ([DCLR-form WS 104](#)) with the court to initiate a compliance hearing.





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The officer must detail the basis for this belief (such as attaching a narrative investigative report to the DCLR Form by reference, including any associated body camera footage) and then file the declaration with the clerk's office at the court that issued the order.

If the court is considering waiving or delaying the compliance review hearing, the petitioner, law enforcement, or the state or city attorney may request that the compliance hearing be held, if there is reasonable suspicion to believe that the respondent has not surrendered all firearms, dangerous weapons, and any concealed pistol license, or is otherwise out of compliance with the court's order.

**Contempt Arrest Warrant for Non Compliance of OTSPW:** Under [RCW 9.41.801](#)(6c), if a court finds at the compliance review hearing (or any other hearing where compliance with the OTSPW is addressed) that there is probable cause to believe the respondent was aware of and failed to fully comply with the order, failed to appear at the compliance review hearing, or violated the order after the court entered findings of compliance, pursuant to its authority under chapter 7.21 RCW, the court may issue an arrest warrant.

The court may then initiate a contempt proceeding to impose remedial sanctions on its own motion, or upon the motion of the prosecutor, city attorney, or the petitioner's counsel, and issue an order requiring the respondent to appear, with additional sanctions for failure to appear, provide proof of compliance with the order, and show cause why the respondent should not be held in contempt of court.

**⚠** Officers should be aware that unlike an ERPO, refusing or failing to comply with an OTSPW is not a Protection Order provision that can be criminally enforced by law enforcement because it does not involve restraint, prohibition, or interference as outlined in [RCW 7.105.450](#)(1a).

Enforcement action directly related to OTSPW compliance would be for contempt through the court as provided in chapter 7.21 RCW.

It is also important to note that the act of voluntarily surrendering firearms or weapons, providing testimony relating to the surrender of firearms or weapons, or complying with an order to surrender and prohibit weapons issued pursuant to [RCW 9.41.800](#) or [RCW 10.99.100](#), and any information directly or indirectly derived from such act or testimony, may not be used against the person subject to the order in any criminal prosecution under chapter 9.41 RCW, chapter 7.105 RCW or [RCW 9A.56.310](#), or in any criminal prosecution pursuant to which such order to surrender and prohibit weapons was issued, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.



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**Search Warrant for OTSPW Compliance:** Upon the sworn statement or testimony of the petitioner or of any law enforcement officer alleging that the respondent has failed to comply with the surrender of firearms or dangerous weapons as required by an order issued under [RCW 9.41.800](#) or [RCW 10.99.100](#), the court shall determine whether probable cause exists to believe that the respondent has failed to surrender all firearms and dangerous weapons in their possession, custody, or control.

*If probable cause exists that a crime occurred*, the court shall issue a warrant describing the firearms or dangerous weapons and authorizing a search of the locations where the firearms and dangerous weapons are reasonably believed to be and the seizure of all firearms and dangerous weapons discovered pursuant to such search.

**Enforcement of Order by Prosecutor Assistance:** Under [RCW 7.105.470](#), when a party alleging a violation of a Protection Order (issued under chapter 7.105 RCW) states that the party is unable to afford private counsel and asks the county or municipal prosecuting attorney in which the order was issued for assistance, the attorney *shall* initiate and prosecute a contempt proceeding if there is probable cause to believe that the violation occurred.

In this action, the court may require the violator of the order to pay the costs incurred in bringing the action, including a reasonable attorney's fee.

**Limits of Liability for Law Enforcement Officers:** Under [RCW 7.105.575](#), except for filing a materially false petition for an ERPO, chapter 7.105 RCW does not impose criminal or civil liability on any person or entity for acts or omissions related to obtaining an ERPO or a temporary ERPO including, but not limited to, reporting, declining to report, investigating, declining to investigate, filing, or declining to file a petition under this chapter.

No law enforcement officer may be held criminally or civilly liable for making an arrest under [RCW 7.105.450](#) if the officer acts in good faith.

Under [RCW 10.99.070](#), a peace officer shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of a court order, or any other action or omission in good faith under chapter 10.99 RCW (Domestic Violence-Official Response) arising from an alleged incident of DV brought by any party to the incident.

**Enforcement for Unlawful Possession of Firearm:** Under [RCW 9.41.040](#), it is a felony offense to possess a firearm if the person has a conviction for a felony crime or certain DV related offenses, including a prior conviction for violation of a Protection Order.

**?** For more information on the complete list of criminal convictions which preclude possession of a firearm, see [RCW 9.41.040\(1\)\(2\)](#).



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It is also a class C felony crime for a person to own, access, have in their custody, control, or possession, or receive any firearm *during any period of time that the person is subject to a Protection Order, No-contact Order, or Restraining Order* by a court<sup>1</sup> if the following conditions are met:

- The order was issued after a hearing for which the person received actual notice, and at which the person had an opportunity to participate (whether the court then issues a full order or reissues a temporary order). If the court enters an agreed order by the parties without a hearing, this order meets the requirements of notice;

⚠ Since it is an element of the felony crime, officers should be aware that temporary (ex-parte) Protection Orders with OTSPW, or prohibition on firearms cannot be enforced through this statute because the respondent has not yet had an opportunity to participate in a hearing.

However, once the respondent has been to court either for a temporary or full order hearing, any subsequent ownership, access, custody, control, or possession, or receipt of any firearm would be a felony violation of [RCW 9.41.040](#).

- Provisions of the order restrain the person from harassing, stalking, or threatening the person protected under the order or child of the person or protected person, or others identified in the order, or engaging in other conduct that would place the protected person in reasonable fear of bodily injury to the protected person or child or others identified in the order; and
- The order includes a finding that the person represents a credible threat to the physical safety of the protected person or child or others identified in the order, or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the protected person or child or other persons that would reasonably be expected to cause bodily injury; or includes an order under [RCW 9.41.800](#) requiring the person to surrender all firearms and prohibiting the person from accessing, having in their custody or control, possessing, purchasing, receiving, or attempting to purchase or receive, firearms.

✔ It is recommended that once the serving officer has probable cause the respondent in a Protection Order is committing a felony violation of [RCW 9.41.040](#), the officer should initiate a criminal investigation and seek a search warrant to secure the firearms as evidence.

<sup>1</sup> Orders issued under chapter [7.105](#), 9A.40, 9A.44, 9A.46, 9A.88, 10.99, 26.09, 26.26A, or [26.26B](#) RCW or any of the former chapters [7.90](#), 7.92, 10.14, and [26.50](#) RCW)



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### ❖ RELATED TOOL-KIT REFERENCES

<a href="#">WS 103</a>	Declaration of Protected Person about Weapons Surrender	<i>State court pattern form for petitioner to initiate compliance hearing for OTSPW</i>
<a href="#">WS 104</a>	Declaration of Law Enforcement about Weapons Surrender	<i>State court pattern form for LE officer to initiate compliance hearing for OTSPW</i>
<a href="#">PO 080</a>	Motion for an Order to go to Court on Contempt Hearing on Protection, Extreme Risk Protection, No Contact, or Weapons Surrender Order (Show Cause)	<i>Court pattern form filed by petitioner, protected person, or prosecutor to request show cause hearing for contempt</i>
<a href="#">PO 084</a>	Contempt Hearing Order (Protection, Extreme Risk Protection, No Contact, Weapons Surrender)	<i>Court pattern form holding respondent in contempt</i>
<a href="#">Hope Card</a>	Example of a Hope Card	<i>State program to provide a wallet-size card with Protection Order information for petitioners</i>



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## 13. REAL-TIME TRACKING, STORAGE, AND REPORTING OF FIREARMS

**Purpose:** This section is to assist law enforcement with creating an internal process for real-time tracking, storage and reporting of firearms that are in the custody of the agency as a result of a DV incident where a crime occurred; firearms surrendered as result of the service of an OTSPW; and firearms surrendered as result of the service of an ERPO.

State law requires all law enforcement agencies to develop and implement policies and procedures regarding the acceptance, storage, and return of firearms required to be surrendered by a court. This policy also encompasses the various statutes related to the surrender and storage of firearms in the custody of law enforcement, as well as best practice recommendations to limit agency liability.

Law enforcement agencies should prepare to have adequate storage to hold firearms surrendered for the duration the Protection Order is in effect.

(The release of firearms is covered in Section 14: “Notification and Return of Firearms”.)

**Surrender of Weapons and CPL Required:** As outlined in Section 9: “Service of Orders”, the provisions of [RCW 9.41.800](#), [RCW 9.41.801](#), and [RCW 7.105.340](#) direct law enforcement in the surrender of firearms, dangerous weapons, and any CPL either through the service of a Protection order with an OTSPW or during the service of an ERPO. [RCW 10.99.030](#) directs law enforcement to secure firearms present at the scene of a DV crime.



It is highly recommended as a matter of public safety that if a respondent shows up at a law enforcement agency to surrender firearms or weapons pursuant to an order, that the agency accept the firearms, even if they are not the designated serving agency, the respondent is not a resident of their jurisdiction, and/or until verification of compliance with the order can be determined.

Law enforcement should take every opportunity to remove barriers, encourage immediate compliance, and help to prevent frustrating a respondent when they are attempting to voluntarily comply. Sending a respondent to a different location, date or time to surrender causes an unnecessary delay in securing the firearms intended to reduce immediate risk, and may cause the respondent to give up trying to comply.

For example, the service of an ERPO is intended prevent immediate harm to the public and/or to prevent access to suicidal means by the respondent, including firearms.

Once the surrendered firearms are secured, the accepting agency should coordinate with the designated serving agency to hold them or transfer custody.



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**Collection of Firearms, Weapons and CPL by Officer:** A law enforcement officer serving a Protection Order, NCO, or Restraining Order in person that includes an OTSPW or an ERPO requires the surrender of all firearms, dangerous weapons (OTSPW only), and a concealed pistol license shall:

- Inform the respondent that the order is effective upon service and the respondent must immediately surrender *all* firearms and dangerous weapons (OTSPW only) in the respondent's custody, control, or possession and any CPL;

☑ It is recommended that once the scene is safe, the serving officer take some time to explain the purpose of the order to the respondent, acknowledging the likelihood of increased emotions and heightened risk during this period. The goal is to obtain cooperation from the respondent in surrendering *all* firearms or dangerous weapons, as well as the respondent's comprehensive understanding and compliance with the order.

Securing voluntary cooperation and understanding can help to encourage safety for the petitioner, respondent, and law enforcement at the time of service, but also may help to dissuade the respondent from future violations, arrests, and prosecutions.

- Conduct any search permitted by law for such firearms, dangerous weapons, and CPL.
- Take possession of all firearms, dangerous weapons, and any CPL belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search. (Refer to agency protocols for requesting consent-to-search).
- The law enforcement officer taking possession of firearms, dangerous weapons, and any CPL *shall issue a receipt at the time of surrender* identifying all firearms, dangerous weapons, and any CPL that have been surrendered and provide a copy of the receipt to the respondent.
- For OTSPW service, the law enforcement agency shall file the original receipt with the court (electronically, if available) *within 24-hours* after service of the OTSPW and retain a copy of the receipt.
- For ERPO service, the officer shall file the original receipt with the court (electronically, if available) *within 72-hours* after service of the ERPO and ensure the law enforcement agency retains a copy.
- If the respondent is in custody, arrangements to recover the firearms pursuant to an ERPO must be made prior to release.
- If personal service by a law enforcement officer is not possible, and the respondent did



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not appear in-person or remotely at the hearing, the respondent shall surrender the firearms in a safe manner to the control of the local law enforcement agency within 24-hours of being served with the order by alternate service\*.

All law enforcement agencies must develop and implement policies and procedures regarding the acceptance, storage, and return of firearms required to be surrendered by a court.

State law also requires that any surrendered firearms must be handled and stored properly to prevent damage or degradation in appearance or function. The condition of the surrendered firearms must be documented, including by digital photograph.

☉ It is recommended that the protocols developed to secure surrendered firearms, dangerous weapons, and any CPL pursuant to an order (or firearms and ammunition collected at the scene of a DV crime) into the Evidence/Property system are consistent with the handling of other evidence and property by the agency.

Firearms, weapons, and any CPL should be booked into the Evidence/Property system without delay after surrender. This process must include an inventory receipt at the time of surrender for the respondent, as well as for the agency and the court.

It is recommended that whenever possible, the quality, appearance, and condition of the firearms be noted on the receipt, and the respondent be asked to sign the receipt as acknowledgement of the inventory and the condition when surrendered to law enforcement.

Any firearm coming into the custody of a law enforcement agency should be checked through WACIC/NCIC to determine if it was reported stolen. Agencies can also check DOL firearm transfer records; however, this information is often incomplete or limited.

Photographing the firearms is required by law and is equally important to protect the agency against claims of loss or damage; therefore, digital photographs should be completed as soon as possible (either at the scene or prior to the items being secured or boxed) before transferring the firearms into the Evidence/Property system according to agency protocols.

As noted in Section 9, if agencies enter the service of Protection Orders into their Records Management System as a call for service or law incident, this incident number can be used for the basis to book, store and track the surrendered firearms, weapons, and any CPL, including the corresponding digital photographs.





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To this end, when agencies are entering surrendered firearms into their Evidence and Property system, it is highly recommended that a specific “firearms surrender” code be used to designate these firearms from those held for “evidence” (such as in a criminal investigation) or those held for “safekeeping” (such as a firearm secured due to a suicidal concern, firearm no longer wanted by the owner, or firearm accidentally left behind in a hotel room).

The agency may also want to create a specific code for “firearms secured at the scene of a DV crime.”

By specifically coding “surrendered firearms” and “firearms at DV crime” in their Records Management System, the agency will be able to immediately track and create statistical reports related to the number and type of orders served or firearms secured at DV crimes. This coding will also allow for detailed data regarding the firearms, weapons or CPLs that were collected, secured, held, returned, or processed for final disposition by the agency.

This coding can give the agency a “real-time” inventory of firearms and the approximate storage availability remaining in their Evidence and Property system. Not only is this information critical when making Service Plans as future orders are received, but it also gives agency administrators a statistical basis when requesting Evidence and Property system improvements or expansions.

Evidence and Property system software can also be helpful to accurately track firearm owner information, details of underlying surrender order, any required/requested notification of victims or protected persons prior to release, and whether the firearm needs to be held for an unrelated investigation.

To protect all surrendered or secured firearms in their custody, agencies should have comprehensive Evidence/Property facility security, inventory safeguards (including random audits), and climate control to prevent the degradation of held property.

Proactive efforts should be taken to prevent damage or degradation to the surrendered firearms (including scratches or rust which could result in a claim against the agency). If possible, firearms should be secured in cardboard firearm evidence boxes.

**Respondent Surrender of Firearms at LE Agency:** Generally, ERPOs or Protection Orders with an OTSPW must be served in-person by law enforcement to facilitate the immediate and orderly surrender of firearms, dangerous weapons, and any CPL. However, there may be a few instances where a respondent will contact law enforcement to bring in their firearms, dangerous weapons, ammunition, and any CPL to the law enforcement agency.





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Such a circumstance may occur if the respondent is served by alternate means, or when the respondent is directly notified during a court hearing that they are required to surrender firearms, dangerous weapons, and any CPL within 24 hours.

The respondent may call or contact the law enforcement agency because they want to surrender firearms at that time, or to schedule an appointment to surrender firearms, other dangerous weapons, and any CPL. Per state law, in these circumstances the respondent has been advised by the court that they must surrender within 24 hours.

☑ It is recommended that when contacted by a respondent, the law enforcement agency should accept the surrendered firearms and any CPL at the soonest opportunity, even if it is after-hours by meeting an on-duty patrol officer at the agency's office or station.

The respondent should be advised of any potential delay based on the availability of personnel, even with a scheduled appointment, and be directed to remain at the location for contact until the firearms are surrendered.

Agencies should establish protocols for the in-person surrender of weapons at the office or station that include respondent being advised to transport firearms in accordance with state law; leave their *unloaded firearms* in their vehicle; walk into the lobby or call from the parking lot for contact; and at *no time* bring firearms, dangerous weapons, or ammunition into the agency building. The protocol should also include how officers will take possession of surrendered weapons and the role of non-sworn staff.

Officers will individually check each surrendered firearm or dangerous weapon to render it safe before it is brought into the facility.

**Receipt for Firearms:** The law enforcement officer taking possession of firearms, dangerous weapons, and any CPL *shall issue a receipt at the time of surrender* identifying all firearms, dangerous weapons, and any CPL that have been surrendered and provide a copy of the receipt to the respondent.

This same receipt process will be followed if the officer secures any firearms present at the scene of a DV crime.

☑ It is recommended that whenever possible, the quality, appearance, and condition of the firearms be noted on the receipt, and the respondent be asked to sign the receipt as acknowledgement of the inventory and the condition when surrendered to law enforcement.

It should be noted that although agencies may use their own Evidence/Property



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receipt forms to inventory and book items, there is also a court pattern “receipt” form which the respondent is required to obtain from law enforcement, signed by the serving officer, which the respondent must then file with the court after surrender. (See related Tool-kit for WS101 Court Form.)

All firearms, dangerous weapons, ammunition, and any CPL will be booked into the agency’s Evidence/Property system without delay in accordance with agency protocols.

(The release of firearms is covered in Section 14: “Notification and Return of Firearms”).)

✔ It is recommended that as part of the inventory, entry into the agency Records Management System, and storage of surrendered firearms that the agency consider requesting an ATF eTrace. This secure portal for law enforcement provides for the systematic tracking of the movement of a firearm recovered by law enforcement from its first sale by the manufacturer or importer through the distribution chain (wholesaler/retailer) to the first retail purchaser.

If the workload permits, some law enforcement agencies have had success in tracing and returning unreported (or entered without a serial number) stolen firearms to the rightful owner. This can be accomplished through checking for associated stolen firearm police reports or contacting the original ATF listed owner to advise them the agency has the firearm in their possession.



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### ❖ RELATED TOOL-KIT REFERENCES

<a href="#"><u>ATF eTrace</u></a>	ATF eTrace: Internet-Based Firearms Tracing and Analysis	<i>ATF on-line service which can trace firearms from manufacture to first purchaser</i>
<a href="#"><u>WS 100</u></a>	Proof of Surrender	<i>State court pattern form for respondent to declare firearms and CPL surrendered to law enforcement</i>
<a href="#"><u>WS 101</u></a>	Receipt for Surrender Firearms, Other Dangerous Weapons and Concealed Pistol License	<i>State court pattern form for LE receipt of surrendered firearms (respondent must file copy with the court)</i>



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## 14. NOTIFICATION/RETURN OF FIREARMS

**Purpose:** The purpose of this section is to assist law enforcement with creating an internal process to make the required or requested notification to victims, family, household members, or intimate partners prior to the release of firearms in the custody of the agency.

This section also encompasses the legal requirements to release firearms by law enforcement, including minimum hold requirements and background checks, as well as options for final disposition.

Firearms owned by the respondent cannot be released to a third-party; law enforcement agencies should prepare to have adequate storage to hold firearms surrendered for the duration the Protection Order is in effect.

**Notification to Victim, Family, Household Member, or Intimate Partner:** Per [RCW 9.41.340](#), each law enforcement agency is required to develop a notification protocol (See example Tool-kit forms) that:

- *Requires notification* to any person identified in a no-contact order, restraining order, or protection order as the protected person and/or any identified victim of the crime that resulted in the firearm surrender.

In addition, the protocol must:

- Allow a family, household member, or intimate partner to *request to be notified* when a law enforcement agency returns a firearm to the individual from whom it was obtained or to an authorized representative of that person;
- Notification relating to the return of one firearm shall be considered notification for all firearms for that person.

Notification may be made via telephone, email, text message, or another method that allows notification to be provided without unnecessary delay. All notifications or attempts to deliver the notification must be documented by the law enforcement agency.



It is recommended that if telephonic or electronic notification is not successful, the agency sends written notification to the last known address via USPS mail.

**Notifications are Confidential:** A law enforcement agency shall not provide notification to any party other than another criminal justice agency; the family, household member or intimate partner who requested the notification; the identified protected person; or the identified victim of the crime that resulted in the firearm surrender.



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The information provided by a family or household member or intimate partner, including the existence of the request for notification, is not subject to public disclosure under chapter 42.56 RCW.

**Owner Claim of Firearms Surrendered in OTSPW:** Under [RCW 9.41.801\(5\)](#), if a person other than the respondent claims title to any firearms or dangerous weapons surrendered pursuant to an OTSPW, and the person is determined by the law enforcement agency to be the lawful owner of the firearm or dangerous weapon, the firearm or dangerous weapon shall be returned to the lawful owner, provided that:

- The firearm or dangerous weapon is removed from the respondent's access, custody, control, or possession and the lawful owner agrees by *written document* signed under penalty of perjury to store the firearm or dangerous weapon in a manner such that the respondent does not have access to or control of the firearm or dangerous weapon;
- The firearm or dangerous weapon is not otherwise unlawfully possessed by the owner; and
- The requirements of [RCW 9.41.345](#) are met (See Release of Firearms Procedures below.)

**Owner Claim of Firearms Surrendered in ERPO:** Under [RCW 7.105.340\(5\)](#), if a person other than the respondent claims title to any firearms surrendered pursuant to an ERPO, and that person is determined by the law enforcement agency to be the lawful owner of the firearm, the firearm must be returned to that person, provided that:

- The firearm is removed from the respondent's custody, control, or possession, and the lawful owner provides by *written document to the court* regarding how the lawful owner will safely store the firearm in a manner such that the respondent does not have access to, or control of, the firearm for the duration of the order;
- The court advises the lawful owner of the penalty for failure to do so; and
- The firearm is not otherwise unlawfully possessed by the owner.

🔍 It is recommended that the law enforcement agency create a protocol instructing claimants of firearms surrendered in an ERPO of how to petition the court for their release. It should be made clear that although law enforcement may verify ownership, the decision to release the claimant's firearm in an ERPO rests with the court.

The agency will still need to follow the release of firearms procedure in [RCW 9.41.345](#), including the required background checks, even if the court issues an Order to Release Weapons to the claimant.



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**Release of Firearms Procedure:** Pursuant to [RCW 9.41.345](#), before a law enforcement agency returns a privately owned firearm, the law enforcement agency must:

- Confirm that the individual to whom the firearm will be returned is the individual from whom the firearm was obtained or an authorized representative of that person (if released to an authorized representative, both the owner and representative will be subject to a background check);
- Law enforcement is not allowed to release firearms directly back to a person who is not a resident of the same state, pursuant to Federal Law under 18 U.S.C- 922(a)(5). Agencies have two choices when returning a firearm to a person who is not a Washington State resident; send it to a law enforcement agency in the state where the person is a resident, or send the firearm to a firearm dealer where the person is a resident.
- Confirm that the individual to whom the firearm will be returned is eligible to possess a firearm pursuant to [RCW 9.41.040](#) (See related Tool-kit for example firearms release checklist forms);
- Ensure that the firearm is not otherwise required to be held in custody or is otherwise prohibited from being released (such as being involved or evidence held in a related or unrelated criminal investigation); and
- Ensure that a minimum of *five business days* have elapsed from the time the firearm was obtained by law enforcement or the order to release the firearm was issued.

As outlined in the “*Notification to Victim, Family, Household Member, or Intimate Partner*” section above, once these background steps are satisfied, the law enforcement agency must within *one business day* provide notification to any identified victim of the crime that resulted in the firearm surrender, and/or the requested family, household or intimate partner, or provide notification to any person identified in a no-contact order, restraining order, or protection order, that the firearm is subject to return.

**⚠** Agencies should be aware that under the court pattern form Order to Release Weapons upon the expiration or termination of the order, the court can order law enforcement to release the firearms, other dangerous weapons, and any CPL to the restrained person/respondent, *provided* there are not any disqualifiers in the background check.

Under [RCW 9.41.080](#), it is a class C felony to deliver a firearm to any person whom they have reasonable cause to believe is ineligible by law to possess a firearm or has signed a valid voluntary waiver of firearm rights.



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After the required background steps and notification(s) have been completed, the law enforcement agency must release the firearm “without unnecessary delay.” The law enforcement agency will release the firearms, including obtaining a signed receipt from the owner, according to their internal evidence/ property handling process.

Under [RCW 7.105.345](#), upon the expiration of an ERPO, any firearm surrendered by a respondent in an ERPO that remains unclaimed by the lawful owner shall be disposed of in accordance with the law enforcement agency's policies and procedures for the disposal of firearms in police custody.

🔍 It is recommended each law enforcement agency adopt a “Firearms Release Checklist” form or computerized record format to formally document each step of the statutorily required process for the firearm notification, background check, and release (See example tool-kit forms).

As part of the background check, the releasing agency may want to check with the local prosecutor’s office for pending charges/investigation of the owner of the firearms which have not yet been filed, but when filed would preclude the possession of firearms.

For all release of firearms, agencies may consider providing a pamphlet or written information regarding safe firearm storage practices and the penalties for unsafe storage of a firearm under [RCW 9.41.360](#). If available, the agency should offer free trigger safety locks.

**Indemnification:** An appointed or elected official, public employee, or public agency, or combination of units of local government and its employees, are immune from civil liability for damages for any notification or the failure to notify victims or protected persons prior to the release of firearms, so long as the failure does not constitute gross negligence.

**Court Ordered Forfeiture of Firearms:** [RCW 9.41.098](#) provides the authority for law enforcement agencies to seek the forfeiture of firearms which are not eligible to be released back to the owner pursuant to the requirements of [RCW 9.41.345](#).

A superior, district, or municipal court may order the forfeiture of a firearm which is determined to be:

- In the possession of a person prohibited from possessing the firearm under [RCW 9.41.040](#), (which includes a prior conviction for DV; or a conviction for violating the provisions of a Protection Order, an OTSPW, or an ERPO);
- In the possession of a person during any period of time that the person is subject to an active Protection Order, No-contact Order, or Restraining Order (with protective and



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restraint provisions) issued by a court *after a hearing for which the person received actual notice, and at which the person had an opportunity to participate*, whether the court then issues a full order or reissues a temporary order. This would include an agreed order by the parties without a hearing;

- In the possession or under the control of a person who committed or was arrested for committing a felony or committing a non-felony crime in which a firearm was used or displayed;
- In the possession of a person who is in any place in which a concealed pistol license is required, and who is under the influence of any drug or under the influence of intoxicating liquor, as defined in chapter 46.61 RCW;
- In the possession of a person free on bail or personal recognizance pending trial, appeal, or sentencing for a felony or for a non-felony crime in which a firearm was used or displayed;
- Used or displayed by a person in violation of a proper written order of a court of general jurisdiction.

It is recommended law enforcement agencies coordinate any firearm forfeiture request with the prosecutor handling the underlying case so the forfeiture order can be entered by the court at sentencing.

A conviction for a DV offense or conviction of a Protection Order violation would then prohibit the return of any of the defendant's firearms in the possession of the agency, either those held for evidence, or those surrendered pursuant to an OTSPW or ERPO.

**Final Disposition of Forfeited Firearms:** Upon entry of an order of forfeiture, the court has the discretion to order the destruction of any forfeited firearm. A court may also temporarily retain forfeited firearms needed for evidence.

Antique firearms and firearms recognized as curios, relics, and firearms of particular historical significance by the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives are exempt from destruction and shall be disposed of by auction or trade to licensed dealers or to museums or historical societies.

Firearms that are judicially forfeited and no longer needed for evidence; or forfeited due to a failure to make a claim under [RCW 63.32.010](#) or [63.40.010](#); may be disposed of in any manner determined by the local legislative authority. Any proceeds of an auction or trade may be retained by the legislative authority.





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It is recommended law enforcement agencies have a formal, written firearms forfeiture policy approved by their local legislative authority which comports to the standards and expectations of their community.



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### ❖ RELATED TOOL-KIT REFERENCES

<a href="#"><u>Motion and Declaration for Order to Release Weapons</u></a>	<i>Court pattern form for respondent to request release of firearms</i>
<a href="#"><u>Order to Release Weapons</u></a>	<i>Court pattern order to LE for release of firearms</i>
<a href="#"><u>Seattle Children's Hospital- Injury Prevention: Gun Safety</u></a>	<i>Website with information and tips for safe firearm storage</i>
<a href="#"><u>Harborview- Washington Firearm Safe Storage Map</u></a>	<i>Statewide program for temporary firearm storage for people in crisis</i>
<a href="#"><u>Lock it Up: Promoting the Safe Storage of Firearms</u></a>	<i>Website with safe storage information and PDF brochure on locking devices</i>



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### 15. CONDUCTING VICTIM (petitioner) INTERVIEWS/VICTIM RIGHTS

**Purpose:** This section outlines trauma informed principals, provides for links to related training, and details the rights afforded to victims by state law.

This section is a valuable reminder that the 911 dispatcher, responding officer, and any agency personnel who may interact with a DV victim or a petitioner in a Protection Order can start to create a sense of safety through empathy, validating feelings, and using “trauma informed” interactions.

When experiencing a traumatic event, the human brain immediately enters a fight or flight survival mode. The ability to remember and process details is remarkably diminished. Several researchers (Jim Hopper, Rebecca Campbell) have written articles and have videos that explain this in detail.

**Victim Rights:** [RCW 7.69.030](#) provides a detailed list of the rights of crime victims in Washington State.

**911 Dispatch Can Lessen Victim Trauma:** It is often overlooked that a victim’s first point of contact in an emergency is not the law enforcement officer, firefighter or EMT arriving at the scene; the first person they talk to and receive help from is the 911 dispatcher.

The way the 911 dispatcher sets the stage for the subsequent contact by law enforcement, fire, or EMS is essential to an effective scene response and investigation. If the dispatcher comes across as curt, rushed, or disinterested during the call, the victim may be hostile or untrusting of the first responders who subsequently arrive at the scene.

A person in shock, experiencing trauma, and in fear for their life will be able to more easily respond to simple, basic questions. This will help gather vital information and may orient the person back to their immediate setting.

#### [Essential 911 questions](#)

For 911 dispatch questions related to Domestic Violence 911 calls and the presence of possible firearms. (See Section 8: “Securing Firearms at the Scene of DV Response”.)

**Trauma-Informed Victim Interviewing:** Building rapport is the first step in interviewing victims in a trauma-informed way. There is no correct reaction to a traumatic event. It is critical to keep in mind that “a victim's reality is your reality” when preparing for and conducting investigative interviews. Take time to explain to the victim that they are having a normal reaction to an abnormal event.



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Each person will respond to trauma in their own way. The fight or flight neurological response to trauma limits the brain's ability to process events. A person in trauma is unlikely to have clear or chronological recall of events.

Officers should be prepared for some of the following trauma-based reactions when interviewing victims or Protection Order petitioners:

- The person may deny they are a victim, blame themselves, or attempt to minimize the conduct of the perpetrator;
- Victims may be fearful of what will happen to them if they make a \*. statement or involve law enforcement; perpetrators may threaten to harm or kill a victim if they speak to law enforcement.
- Victims may have an inherent fear or distrust of law enforcement and/or the criminal justice system.
- Officers should also be aware of cultural differences and provide reassuring support and understanding in their attempt to protect the victim;
- Victims may be distracted, angry, reluctant, or concerned about their own needs or their children's;
- Victims may have fears around safety and privacy, particularly if the interview is in front of others;
- Victims may have unmet medical needs, including the lack of nutrition or sleep.

**Steps in Interviewing Victims:** As officers approach a victim to conduct an interview, it should be a gradual and non-threatening process in consideration of the following steps:

- First, if the victim requires medical services, call for aid or transport the victim to appropriate care.
- Interviewers should introduce themselves and explain their role at the beginning of every interview.
- The use of audio or video recording of the interview can later show the state of mind, trauma, and emotional impact to the victim immediately after the event, but the victim must be comfortable with the recording process. (Officers should refer to agency recording or body-camera protocols.)
- Acknowledge that the situation is not the victim's fault; the perpetrator is responsible.



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- If a local advocate is not available to meet with the victim, law enforcement should refer the victim to a local or national domestic violence service provider for safety planning.
- Trained advocates are best positioned to address the victim's health, transportation, and housing needs. (Refer to Section 17: "Lethality Assessment Protocols and Risk Assessments".)



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### ❖ RELATED TOOL-KIT REFERENCES

<a href="#"><u>DSHS website</u></a>	<i>Trauma informed approach on-line training</i>
<a href="#"><u>International Association of Chiefs of Police</u></a>	<i>Trauma informed interviewing tips</i>
<a href="#"><u>Chapter 7.69- Crime Victims Bill of Rights</u></a>	<i>Washington State Legislature</i>

**Sexual Assault Kit Initiative The neurobiology of Trauma**

**Neurobiology of trauma & sexual assault - Jim Hopper Ph.D. July 2015**



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## 16. DOCUMENTING FIREARM INFORMATION IN INCIDENT REPORTS

**Purpose:** The purpose of this section is to provide the required statutory information for law enforcement to document the presence of firearms, dangerous weapons, and CPLs in incident reports. Additionally, law enforcement has a responsibility to ensure the required information is available to be provided to the court.

This section provides best practice recommendations to mitigate future safety concerns involving firearms for all parties involved, including law enforcement officers who may be required to serve an order or respond to a DV incident.

### **RCW 10.99.030- Peace Officer Response to Domestic Violence Crime:**

- (1) The primary duty of peace officers, when responding to a domestic violence situation, is to enforce the laws allegedly violated and to protect the complaining party.
- (2)(a) When a peace officer responds to a domestic violence call and has probable cause to believe that a crime has been committed, the peace officer shall exercise arrest powers with reference to the criteria in [RCW 10.31.100](#). The officer shall notify the victim of the victim's right to initiate a criminal proceeding in all cases where the officer has not exercised arrest powers or decided to initiate criminal proceedings by citation or otherwise. The parties in such cases shall also be advised of the importance of preserving evidence.  
(b) A peace officer responding to a domestic violence call shall take a complete offense report including the officer's disposition of the case.
- (3)(a) A peace officer who responds to a domestic violence call and has probable cause to believe that a crime has been committed shall:
  - Seize all firearms and ammunition the peace officer has reasonable grounds to believe were used or threatened to be used in the commission of the offense;
  - Seize all firearms in plain sight or discovered pursuant to a lawful search; and
  - Request consent to take temporary custody of any other firearms and ammunition to which the alleged abuser has access until a judicial officer has heard the matter.
  - The peace officer shall separate the parties and then inquire of the victim:
    - If there are any firearms or ammunition in the home that are owned or possessed by either party;
    - if the alleged abuser has access to any other firearms located off-site;





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- whether the alleged abuser has an active concealed pistol license, so that there is a complete record for future court proceedings.
- The peace officer should make it clear to the victim that they are not only asking whether a firearm was used at the time of the incident but also under other circumstances, such as whether the alleged abuser has kept a firearm in plain sight in a manner that is coercive, has threatened use of firearms in the past, or has additional firearms in a vehicle or at another location.
- Law enforcement personnel may use a pictorial display of common firearms to assist the victim in identifying firearms.
- The peace officer shall document all information about firearms and concealed pistol licenses in the incident report.
- The incident report must be coded to indicate the presence of or access to firearms so that personal recognizance screeners, prosecutors, and judicial officers can address the heightened risk to victim, family, and peace officer safety due to the alleged abuser's access to firearms.



It is recommended that when responding to a DV call, and there is no probable cause that a crime was committed, it is an officer safety practice for the officer to still inquire about the presence or access to firearms.

If firearms are present, the officer should advise how to always secure all firearms and ammunition in a safe manner to reduce the risk of harm to the parties, children, others in the home, as well as responding peace officers. The safe storage of firearms is also a critical factor in reducing access to suicidal means.

As part of this discussion, law enforcement officers should provide a pamphlet or written information about secure firearm storage, including locking mechanisms, in addition to a DV resource sheet required by [RCW 10.99.030\(4a\)](#). Resources should also outline how to obtain free firearm trigger locks, [Firearms Safe Storage](#).

After clearing the call, officers should take a few moments to document the presence or access to firearms in the agency's CAD or Records Management system so that should one of the parties seek a Protection Order in the future, or law enforcement must respond to the location again on a DV call, current firearm information is readily available to law enforcement.



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**RCW 10.99.040 Importance of documentation by law enforcement:** Under the provisions of this statute, the court will rely on law enforcement documentation regarding firearms when considering the issuance of a criminal No-contact Order:

- In considering release from custody for a DV charge, the court shall verify that the responding law enforcement officers secured firearms related to the crime, those which were in plain sight or discovered pursuant to a lawful search, and review the sworn statement of a peace officer documenting that the responding peace officers separated the parties and asked the victim or victims at the scene about firearms, other dangerous weapons, and ammunition that the defendant owns or has access to, and whether the defendant has a CPL.
- If the sworn statement of a peace officer or other information provided to the court indicates there may be a risk of harm if the defendant has access to firearms, dangerous weapons, or an active CPL, the court shall verify that peace officers have temporarily removed and secured all the firearms, dangerous weapons, and any CPL.
- The court shall then determine whether an OTSPW or an ERPO should be issued prohibiting the defendant from possessing, purchasing, receiving, having in the defendant's control or custody, accessing, or attempting to purchase or receive, any firearms, dangerous weapons, and any CPL and shall order the defendant to surrender, and prohibit the defendant from possessing, any firearms, dangerous weapons, and any CPL as required in [RCW 9.41.800](#), or shall issue an ERPO as required.

**⚠** Officers need to be aware that when considering the conditions for release and the issuance of a NCO, the court is relying on the firearm, dangerous weapon and CPL information gathered and filed with the court by law enforcement officers who were at the scene and presented by prosecutors.

Without the information regarding the presence or access to firearms and dangerous weapons, and whether the firearms have already been collected by law enforcement, the prosecutor will not have the information they need to present, and the court will not have the information to make an informed decision when issuing a NCO necessary to protect the DV victim.

Agencies must have a robust protocol for collecting this information as required by law and seeing that it is promptly filed with the appropriate prosecutor and court.



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- At the time of arraignment, the court shall review the defendant's firearm purchase history provided by the prosecutor pursuant to [RCW 10.99.045](#), and any other firearms information provided by law enforcement or court or jail staff, and shall determine whether a no-contact order, an OTSPW or an ERPO shall be issued or, if previously issued, extended. (See Section 10: "Assessing Firearms History".)

**RCW 9.41.801- Surrender of Weapons under OTSPW:** Under the provisions of this statute related to the OTSPW, law enforcement documentation of firearms is required under the following circumstances:

- At the time of surrender, a law enforcement officer taking possession of firearms, dangerous weapons, and any CPL shall issue a receipt and provide a copy to the respondent. The law enforcement agency shall file the original receipt with the court within 24-hours after service (electronically, if available) and retain a copy.
- At the hearing, the court shall take judicial notice of the receipt filed by the law enforcement agency.
- The court shall also provide sufficient notice to the law enforcement agency prior to a hearing. Upon receiving notice, a law enforcement agency must:
  - Provide the court with a complete list of firearms and other dangerous weapons surrendered by the respondent or otherwise belonging to the respondent that are in the possession of the law enforcement agency; and
  - Provide the court with verification that any CPL issued to the respondent has been surrendered and an agency with authority to revoke the license has been notified.
  - If the law enforcement agency has a reasonable suspicion that the respondent is not in full compliance with the terms of the order, the law enforcement agency must submit the basis for its belief to the court and may do so through the filing of a declaration.



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## 17. LETHALITY ASSESSMENT PROTOCOLS AND RISK ASSESSMENTS

**Purpose:** This section provides information and guidance on the use of lethality and risk assessments in the prevention and response to Domestic Violence. These assessments can be helpful for law enforcement and social service providers when determining future risk to victims and the potential of harm or death.

According to the Centers for Disease Control, intimate partner violence and domestic violence killings are a serious public health problem. One in five homicide victims in the United States are killed by an intimate partner. Over half of all female homicide victims are killed by a current or former male intimate partner. In 2023, 51,100 women and girls were murdered by family member or intimate partners, globally. The United States ranks 34<sup>th</sup> highest of countries for intentional female homicide, out of 195 countries in the world.

The goal of a Lethality Assessment Program is to educate intimate partner violence victims about risk factors for homicide and to connect them with support and safety planning services.

Law enforcement officers and other community professionals trained in this approach use the evidence-based lethality assessment instruments to identify victims of intimate partner violence who score at the highest risk of being killed by their intimate partners.

While there are multiple types of lethality assessment tools, it is a best practice for each agency to only utilize a tool validated by researchers as effective. These tools are evidence based, and all supporting data indicates lives are saved by the proper use of the tools and understanding of the results.

The tool is initially used by law enforcement. However, the results inform charging and sentencing decisions for prosecutors, judges, advocates and, most importantly, can inform a victim of the danger they are facing.

**Lethality Assessment Protocol (LAP):** The LAP is an actuarial assessment used at the scene or as soon after as practical, where the victim answers several evidence-based questions. The answers to these questions assess the victim's level of risk for being killed by their intimate partner. <sup>2</sup>

**Danger-Assessment Law Enforcement (DA-LE):** The DA-LE assessment is also used at the scene, or as soon after as practical, and consists of similar questions.

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<sup>2</sup> Effectiveness of the Lethality Assessment Program, June 2022. [www.lethalityassessmentprogram.org](http://www.lethalityassessmentprogram.org)



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Any assessment and results should be utilized as a supplement to the police report. While there is consistency with the LAP process, a high-risk response to a DA-LE requires the victim to be immediately connected to services and the assessment must be provided to the court to inform any criminal proceedings.

The lethality assessment questions were developed using research conducted by Dr. Jacquelyn Campbell with Johns Hopkins University School of Nursing.

Dr. Campbell found that women were **20** times more likely to be killed by the intimate partner if their partner had threatened to use a weapon on them or had hurt them previously with a weapon; nearly **15** times more likely to be killed if their partner had threatened to kill them; and nearly **10** times more likely to be killed if their partner had ever tried to choke them. <sup>xv</sup>

The ODARA (Ontario Domestic Assault Risk Assessment), used to estimate the risk of recidivism, and LAP 2.0 are also used in Washington.



It is recommended that a jurisdiction uses a LAP or Risk Assessment. There must be an active protocol to directly engage services for the victim at the time of contact by law enforcement. It is recommended that judges, prosecutors, and advocates in the jurisdiction are trained on the assessment tool (s) used by local law enforcement.

When using these tools and completing these assessments, it is not acceptable to leave a victim on their own given the assessed danger or waiting until regular business hours to contact domestic violence service providers to determine which services are available and right for them. It is vital that a person who scores as high risk for homicide receives support immediately.



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## Footnotes

### Footnotes:

i Campbell, J.C., Webster, D., Koziol-McLain, J., Block, C., Campbell, D., Curry, M. A., Gary, F., Glass, N., McFarlane, J., Sachs, C., Sharps, P., Ulrich, Y., Wilt, S. A., Manganello, J., Xu, X., Schollenberger, J., Frye, V., & Laughon, K. (2003). Risk factors for femicide in abusive relationships: Results from a multisite case control study. *American Journal of Public Health*, 93(7), 1089-1097. <https://doi.org/10.2105/ajph.93.7.1089>

ii Saltzman, L. E., Mercy, J. A., O'Carroll, P. W., Rosenberg, M. L., & Rhodes, P. H. (1992). Weapon involvement and injury outcomes in family and intimate assaults. *Journal of the American Medical Association*, 267(22), 3043-3047

iii Sorenson SB, Schut RA. Nonfatal Gun Use in Intimate Partner Violence: A Systematic Review of the Literature. *Trauma Violence Abuse*. 2018 Oct;19(4):431-442. doi: 10.1177/1524838016668589. Epub 2016 Sep 14. Erratum in: *Trauma Violence Abuse*. 2023 Jun 26;:15248380231186668. PMID: 27630138.

iv Ibid.

v Ibid.

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# WASHINGTON STATE CRIMINAL JUSTICE COMMISSION

*Model Policy Desk Reference for Protection Orders, including Extreme Risk Protection Orders, Orders to Surrender and Prohibit Weapons, and DV 911 response involving firearm relinquishment.*

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## WASPC Accreditation Related Standards:

- 15.12 *Agency has policy and provides training on the service of protection orders, Extreme Risk Protection Orders (ERPOs), and orders to surrender weapons. Policy directs personnel to attempt service within 24 hours of receipt of order whenever practicable but not more than 10 days after the agency has received the order (RCW 7.94.060).*
- 17.3 *The agency has a policy that requires property and evidence is placed under the control of the property and evidence function before the officer completes their shift.*
- 17.11 *The agency provides additional security for guns, drugs, cash, jewelry, or other sensitive or valuable property, that is over and above that provided for other property and evidence.*
- 17.12 *Evidence and property is packaged, individually tagged and logged into a centralized tracking system as soon as possible. The tracking system must accurately describe the current location and movement within the property system, of every piece of property and evidence.*
- 17.20 *The agency ensures that an unannounced audit of evidence and property, including drugs, money, jewelry, and firearms is conducted at least annually by personnel not directly in the evidence unit's chain of command.*
- 17.23 *The agency has policy complying with RCWs 7.105 and 9.41 regarding the acceptance, storage, and release of firearms surrendered to the Department.*
- 17.24 *The agency has policy complying with RCWs 7.105 and 9.41 for notification of family or household members when firearms held pursuant to a court order are released.*

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