Domestic Violence Protection Order Case Law in Washington State

A Resource for Attorneys

***IMPORTANT**: This guide is for attorneys helping clients with domestic violence protection order issues.*

*This guide **does not give instructions** or information about getting a protection order. If you need information on how to get a protection order, visit www.WashingtonLawHelp.org and enter the words "protection order" in the search bar at the top.*

Table of Contents

Key Published Cases

Aiken v. Aiken, 187 Wn.2d 491, 387 P.3d 680 (2017)

Barber v. Barber, 136 Wn. App. 512, 150 P.3d 124 (2007)

Blackmon v. Blackmon, 155 Wn. App. 715, 230 P.3d 233 (2010)

Braatz v. Braatz, 2 Wn. App. 2d 889, 413 P.3d 613 (2018)

Danny v. Laidlaw Transit Servs., Inc., 165 Wn.2d 200, 193 P.3d 128 (2008)

Fowler v. Fowler, 8 Wn. App. 2d 225, 439 P.3d 701 (2019)

Gourley v. Gourley, 158 Wn.2d 460, 145 P.3d 1185 (2006)

Hecker v. Cortinas, 110 Wn. App. 865, 43 P.3d 50 (2002)

In re Marriage of Barone, 100 Wn. App. 241, 996 P.2d 654 (2000)

In re Marriage of Freeman, 169 Wn.2d 664, 239 P.3d 557 (2010)

In re Marriage of Stewart, 133 Wn. App. 545, 137 P.3d 25 (2006)

In re Parentage of T.W.J., 193 Wn. App.1, 367 P.3d 607 (2016)

Juarez v. Juarez, 195 Wn. App. 880, 382 P.3d 13 (2016)

Maldonado v. Maldonado, 197 Wn. App. 779, 391 P.3d 546 (2017)

Muma v. Muma, 115 Wn. App. 1, 60 P.3d 592 (2002)

Neilson ex rel. Crump v. Blanchette, 149 Wn. App. 111, 201 P.3d 1089 (2009)

Rodriguez v. Zavala, 188 Wn.2d 586, 398 P.3d 1071 (2017)

Scheib v. Crosby, 160 Wn. App. 345, 249 P.3d 184 (2011)

Smith v. Smith, 1 Wn. App. 2d 122, 404 P.3d 101 (2017)

Spence v. Kaminski, 103 Wn. App. 325, 12 P.3d 1030 (2000)

State v. Dejarlais, 136 Wn.2d 939, 969 P.2d 90 (1998)

State v. Karas, 108 Wn. App. 692, 32 P.3d 1016 (2001)

Ugolini v. Ugolini, No. 36156 –111, 453 P.3d 1027 (2019)

Introduction

In 1984, Washington State passed the Domestic Violence Prevention Act (DVPA). This law has been amended several times since 1984 and is codified at RCW 26.50.

The DVPA created **civil domestic violence protection orders** (DVPOs). This outline provides a summary of published appellate cases in Washington State which interpret the provisions of the law that apply when domestic violence survivors seek civil DVPOs.

This outline is not intended to be a substitute for reading the cases cited or from reading the relevant statutes. Instead, it is intended to provide a quick resource for identifying published case law in Washington State that may be relevant in representing clients seeking DVPOs, both at the trial court level and on appeal.

Appeals

Appeals involving DVPOs are governed by the Washington Rules of Appellate Procedure. Be advised that it can often take more than a year after filing a notice of appeal to receive a final decision from the Court of Appeals.

Standard of Review

On appeal, the trial court's decision is reviewed for abuse of discretion. An abuse of discretion by a trial court includes applying the wrong legal standard**.**

- "The trial court holds discretion when entertaining petitions for domestic violence protection orders. We will not disturb such an exercise of discretion on appeal absent a clear showing of abuse. An abuse of discretion is found when a trial judge's decision is exercised on untenable grounds or for untenable reasons. A trial court abuses its direction if its decision was reached by applying the wrong legal standard."
    - ↳ *Juarez v. Juarez*, 195 Wn. App. 880, 890, 382 P.3d 13 (2016) (internal citations omitted).
- "Whether to grant, modify or terminate a protection order is a matter of judicial discretion…. Where the decision or order of the trial court is a matter of discretion, it will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or excised on untenable grounds, or for untenable reasons."
    - ↳ *In re Marriage of Freeman*, 169 Wn. 2d 664, 671, 239 P.3d 557 (2010), *superseded by statute on other grounds*.
    - ↳ *In re Parentage of T.W.J.*, 193 Wn. App. 1, 6, 367 P.3d 607 (2016) (internal citation omitted).
- "The trial court holds discretion when entertaining petitions for domestic violence protection orders. We will not disturb such an exercise of discretion on appeal absent a clear showing of abuse. An abuse of discretion is found when a trial judge's decision is exercised on untenable grounds or for untenable reasons. A trial court abuses its discretion if its decision was reached by applying the wrong legal standard."
    - ↳ *Juarez v. Juarez,* 195 Wn. App. 880, 890, 382 P.3d 13 (2016) (internal citations omitted)
- "The decision to grant or deny a domestic violence protection order is reviewed for an abuse of discretion. An abuse of discretion is found when a trial judge's decision is exercised on untenable grounds or for untenable reasons, or if its decision was reached by applying the wrong legal standard."

↳ *Maldonado v. Maldonado*, 197 Wn. App. 779, 789, 391 P.3d 546 (2017) (internal citations omitted).

- Basing a ruling on an erroneous view of the law is necessarily an abuse of discretion.

  ↳ *Scheib v. Crosby*, 160 Wn. App. 345, 350, 249 P.3d 184 (2011) ("'A trial court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law." (quoting *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993))).

- "An abuse of discretion is found when a judge's decision is exercised on untenable grounds or for untenable reasons. A decision is based on untenable reasons if it is based on an incorrect standard."

  ↳ *Rodriguez v. Zavala*, 188 Wn.2d 586, 598, 398 P.3d 1071 (2017) (finding abuse of discretion where "trial court applied the wrong legal standard in reviewing the definition of 'domestic violence'….").

Questions of Law on Appeal

Questions of law are reviewed *de novo* on appeal.

- "Whether [respondent] had a due process right to cross-examine R.A. is a question of law we review de novo."

  ↳ *Aiken v. Aiken*, 187 Wn.2d 491, 501, 387 P.3d 680 (2017).

Statutory Interpretation Rules

- "When an action turns on the correct interpretation of a statute, the standard of review is de novo."

  ↳ *Scheib v. Crosby*, 160 Wn. App. 345, 350, 249 P.3d 184 (2011) (citing *Johnson v. County of Kittitas*, 103 Wn. App., 216, 11 P.3d 862 (2000)).

- "We review questions of statutory interpretation de novo to give effect to the legislature's intentions."

  ↳ *Rodriguez v. Zavala,* 188 Wn.2d 586, 591, 398 P.3d 1071 (2017).

- "Under the general principles of statutory construction, the court's fundamental duty is to ascertain and carry out the intent of the Legislature. An unambiguous statute is not subject to interpretation, and the statute's meaning is derived solely from its language. The court may not add language to a clearly worded statute, even if it believes the Legislature intended more. Statutes are construed as a whole, giving effect to each provision."

  ↳ *Spence v. Kaminski*, 103 Wn. App. 325, 333, 12 P.3d 1030 (2000).

- "The purpose of statutory interpretation is to effectuate the legislature's intent. When determining the applicability of a statute, as in passing on the meaning of any legislative enactment, we look, in part, to the policy behind it. The policy behind the Domestic Violence Prevention Act bolsters a conclusion that limiting the duration of the protection order in deference to a separate marital dissolution proceeding contradicts RCW 26.50.024(2)."

    ↳ *Juarez v. Juarez*, 195 Wn. App. 880, 888, 382 P.3d 13 (2016) (internal citations omitted).

Credibility and Factual Determinations by the Trial Court

- Credibility of witnesses is not reviewable by the Court of Appeals.

    ↳ *Spence v. Kaminski*, 103 Wn. App. 325, 333, 12 P.3d 1030 (2000) (noting that the petitioner's "credibility is not reviewable by this court").

- Factual determinations by the trial court will typically not be disturbed on appeal.

  "But it is the trial court's role to weigh the persuasiveness of the evidence, and we typically will not disturb factual determinations on appeal."

    ↳ *In re Parentage of T.W.J.*, 193 Wn. App. 1, 7-8, 367 P.3d 607 (2016) (rejecting respondent's argument that appellate court could not, as a matter of law, find his death threat credible absent additional evidence).

Mootness

Mootness may arise as an issue on appeal if a DVPO has expired before the Court of Appeals issues a decision. However, the Court of Appeals may consider an appeal despite mootness, if the case presents issues that are of substantial public interest.

- "A case is moot if a court can no longer provide effective relief. We normally dismiss a case that involves only moot questions, unless that case presents issues that are of substantial and continuing interest."

    ↳ *Blackmon v. Blackmon*, 155 Wn. App. 715, 720-21, 230 P.3d 233 (2010) (internal citations omitted); *see also Maldonado v. Maldonado*, 197 Wn. App. 779, 790, 391 P.3d 546 (2017) (citing *Blackmon*).

- "We consider three factors in deciding whether a case presents issues of continuing and substantial interest: (1) whether the issue of a public or private nature, (2) whether an authoritative determination is desirable to provide future guidance of public officers, and (3) whether the issue is likely to recur."

    ↳ *Id.* at 721 (internal citations omitted).

Other Key Rules on Appeal

- Court of Appeals "may affirm the trial court on any basis supported by the record."
    - ↳ *In re Parentage of T.W.J.*, 193 Wn. App. 1, 8 n.1, 367 P.3d 607 (2016).
- A respondent lacks standing to challenge a DVPO based on relief that was not requested or granted in the DVPO.
    - ↳ *Muma v. Muma*, 115 Wn. App. 1, 6, 60 P.3d 592 (2002) (respondent to a DVPO lacked standing to challenge provision in RCW 26.50 that authorized electronic monitoring of respondents because such relief had not been requested or granted against him).
- Under RAP 2.5, reviewing courts possess discretion to decide whether an argument was sufficiently raised at trial in order to be addressed on appeal.
    - ↳ *Rodriguez v. Zavala*, 188 Wn.2d 586, 596, 398 P.3d 1071 (2017) (exercising discretion to consider whether a child's presence in a violent home meets the definition of "domestic violence").
- "Generally, we may refuse to review a claim of error not raised in the trial court. RAP 2.5(a). However, where, as here, the asserted error concerns the trial court's authority to act, we may elect to review the issue. *See* RAP 2.5(a)(1) (appellate court may review issue of lack of trial court jurisdiction for first time on appeal)."
    - ↳ *Neilson ex rel. Crump v. Blanchette*, 149 Wn. App. 111, 115, 201 P.3d 1089 (2009).
- If an appellant does not assign errors to the trial court's findings of fact, they are verities on appeal.
    - ↳ *Scheib v. Crosby*, 160 Wn. App. 345, 349, 249 P.3d 184 (2011) ("…Mr. Crosby failed to assign error to the trial court's findings of fact, making them verities on appeal.").
- "Under RCW 2.24.050, the findings and orders of a court commissioner not successfully revised become the orders and findings of the superior court. A revision denial constitutes an adoption of the commissioner's decision, and the court is not required to enter separate findings and conclusions. On appeal, this court reviews the superior court's ruling, not the commissioner's."
    - ↳ *Maldonado v. Maldonado*, 197 Wn. App. 779, 789, 391 P.3d 546 (2017) (internal citations omitted).

Attorney Fees

Generally

RCW 26.50.060(1)(g) authorizes courts to grant attorney fees and costs to a petitioner who seeks a DVPO.

Under the statute, courts *may* grant attorney fees to the petitioner but not to the respondent.

- "…Cortinas cites no authority for ignoring the plain language of the statute and extending its reimbursement provision to a respondent such as herself."
    - ↳ *Hecker v. Cortinas*, 110 Wn. App. 865, 871, 43 P.3d 50 (2002).
- RCW 26.50 "does not mention attorney fees for a respondent defending against a protection order action."
    - ↳ *Id.*, 110 Wn. App. at 871 n.3.
- "Courts decline to award attorney fees under a statute unless there is a clear expression of intent from the legislature authorizing such an award. We review a grant or denial of attorney fees for abuse of discretion."
    - ↳ *In re Marriage of Freeman*, 169 Wn.2d 664, 676, 239 P.3d 557 (2010) (internal citations omitted), *superseded on other grounds by statute*.

The court has *discretion* to award attorney fees to a petitioner but is not required to do so.

- "In any event, the grant of attorney fees under the DVPA, where authorized, is discretionary."
    - ↳ *Id.* at 677.

On Appeal

Attorney fees and costs on appeal may be granted by the Court of Appeals to the person protected by the DVPO, under both RCW 26.50.060(1)(g) and RAP 18.1.

- "[The protected party] requests attorney fees and costs for having to respond to this appeal under RCW 26.50.060(1)(g) and RAP 18.1. We grant her request…."
    - ↳ *Barber v. Barber*, 136 Wn. App. 512, 517, 150 P.3d 124 (2007).
- "We therefore grant [the protected party's] request for attorney fees under RCW 26.50.060(1) and conditioned on her compliance with RAP 18.1. *See, e.g.*, *Freeman*, 169 Wn.2d at 676 (acknowledging that the DVPA authorizes an award of reasonable attorney fees incurred by a protected party seeking an order of protection.)"

↳ *In re Parentage of T.W.J.*, 193 Wn. App. 1, 10, 367 P.3d 607 (2016).

- A protected party who did not seek fees in the trial court may seek attorney fees for the first time on appeal for the fees incurred on appeal.

  ↳ *Scheib v. Crosby*, 160 Wn. App. 345, 353, 249 P.3d 184 (2011).

- "The award of attorney fees under RCW 26.50.130 is discretionary….In this appeal, [the restrained party] provided a robust record, made several claims of error to the trial court's findings with rigorous briefing, and relied on accurate and up-to-date statutory and case law…. [A]ppeal appears to be a sincere and good faith challenge to the trial court's findings. Accordingly, we decline to exercise our discretion to award [protected party] attorney fees on appeal.

  ↳ *Fowler v. Fowler,* 8 Wn. App. 2d 225, 439 P.3d 701, 710 (2019).

Note: If a respondent substantially prevails on an appeal of a DVPO, the respondent may be awarded costs of the appeal.

- A substantially prevailing party on appeal is entitled to costs on appeal, provided the party files a cost bill pursuant to RAP 14.4(a).

  ↳ *Neilson ex rel. Crump v. Blanchette*, 149 Wn. App. 111, 119, 201 P.3d 1089 (2009).

Children

Including Children in DVPOs

- "A person may petition for protection on behalf of minor household members. RCW 26.50.020(1)."
    - ↳ *Aiken v. Aiken*, 187 Wn.2d 491, 497, 387 P.3d 680 (2017).
- Based on the language of the DVPA, a petitioner "could file her petition for protection on behalf of herself and her children."
    - ↳ *Juarez v. Juarez*, 195 Wn. App. 880, 886, 382 P.3d 13 (2016).
- A DVPO "may restrict contact between a parent and child, in which case the restraint may not exceed a maximum period of one year."
    - ↳ *In re Marriage of Stewart*, 133 Wn. App. 545, 550-51, 137 P.3d 25 (2006).
- "Even when there is no evidence of a direct assault on a child, fear of violence is a form of domestic violence that will support an order for protection" for a child.
    - ↳ *Maldonado v. Maldonado*, 197 Wn. App. 779, 791, 391 P.3d 546 (2017).
- When physical discipline of a child permitted by RCW 9A.16.100 is alleged, courts must analyze the appropriate factors before concluding whether the behavior by a parent constitutes domestic violence.
    - ↳ *Ugolini v. Ugolini*, No. 36156 –111, 453 P.3d 1027, 1030 (Wash. Div. 3 2019).

Impact of Children Witnessing DV

- "[T]here was ample evidence that [respondent] caused his children to fear he would assault [their mother]. Such fear is indeed psychological harm, as the trial court termed it. It is also domestic violence, and is a statutory basis for an order of protection."
    - ↳ *In re Marriage of Stewart,* 133 Wn. App. 545, 551, 137 P.3d 25 (2006).
- "[Respondent] contends that the State may interfere in a parental relationship only when a child has been harmed or there is a credible threat of harm to the child. [Respondent] is correct, but he fails to describe any way in which the protection order violated this principle. His children were harmed by his repeated violence toward their mother, which was committed in their presence and resulted in the fear that he would again assault her."
    - ↳ *Id.* at 555-56.

- "There is no requirement for corroboration and no requirement that the children testify to or voice their fear to establish that violence has made them fearful."

  ↳ *Maldonado v. Maldonado*, 197 Wn. App. 779, 792, 391 P.3d 546 (2017).

- "We hold that exposure to domestic violence is harmful under the DVPA."

  ↳ *Rodriguez v. Zavala*, 188 Wn.2d 586, 596, 398 P.3d 1071 (2017).

- "Scholarly research supports the conclusion that exposure to domestic violence is a simpler, more insidious method of inflicting harm. While exposure to abuse may not leave visible scars, the secondary physical and psychological effects of exposure are well documented."

  ↳ *Id.* at 597 (citations omitted).

- "In addition to witnessing violence, hearing and seeing its effects on loved ones may harm a child's brain development and lead to learning disabilities, put children under emotional stress, and contribute to an increase in anxiety, sleep disorders, and posttraumatic stress disorder. More importantly, our legislature has recognized that domestic violence is 'at the core of other major social problems: Child abuse, other crimes of violence against person or property, juvenile delinquency, and alcohol and drug abuse.'"

  ↳ *Id.* at 597-98 (citations omitted).

- "[E]xposure to domestic violence constitutes harm under the DVPA and qualifies as domestic violence under chapter 26.50 RCW."

  ↳ *Id.* at 599.

Residential Provisions for Children in DVPOs

- "When a protection order affects contact with children, the court must consider the best interests of the children and the other factors set forth in the Parenting Act of 1987, chapter 26.09: 'On the same basis as is provided in chapter 26.09 RCW, the court shall make residential provision with regard to minor children of the parties. However, parenting plans as specified in chapter 26.09 RCW shall not be required under this chapter.'"

  ↳ *In re Marriage of Stewart*, 133 Wn. App. 545, 552, 137 P.3d 25 (2006).

- "[N]othing in RCW 26.50.060(1) indicates a legislative intent to incorporate the full panoply of procedures and decision factors from the Parenting Act into the protection order proceeding. To the contrary, the protection order proceeding is intended to be a rapid and efficient process. Parents are required to disclose whether there is a parenting plan in place, and the court is expressly authorized to make a temporary order affecting the residential arrangements of children and/or restricting parental contact without entering a parenting plan. Any such order is limited to one year. The fact that the

protection order court is required to make its orders affecting minor children 'on the same basis' as required by the family law statutes does not mean that the same formal findings or procedures are required. Rather, it means what it says: the protection order court must consider the same factors in making its temporary orders."

↳ *Id.* at 552-53.

- The Domestic Violence Prevention Act (RCW 26.50) and the Parenting Act (RCW 26.09) are "entirely consistent."

  "RCW 26.09.191(2)(a) provides that in parenting plans, residential time with a child must be restricted where there is a pattern of emotional abuse of the child or a history of acts of domestic violence:

  > *The parent's residential time with the child shall be limited if it is found that the parent has engaged in* any of the following conduct: (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting function; (ii) physical, sexual, or a *pattern of emotional abuse of a child; (iii) a history of acts of domestic violence as defined in RCW 26.50.010(1)* or an assault or sexual assault which causes grievous bodily harm or the fear of such harm….

  This provision incorporates the definitions of domestic violence contained in the protection order statute. Authorizing the domestic violence protection order court to restrict contact is thus entirely congruent with the Parenting Act."

  ↳ *Id.* at 553-54.

- "If protection order restrictions [regarding contact with children] have more than a very temporary duration, it is because the parties have delayed in seeking resort to family court. Delay is not a result of the protection order."

  ↳ *Id.* at 554.

- "No rational person would voice an objection to temporary suspension of contact where a parent has physically abused his children."

  ↳ *Id.* at 555.

Collateral Consequences of DVPOs

In response to various constitutional challenges to DVPOs by abusers, Washington courts have noted that civil DVPOs do not result in massive curtailment of the respondent's liberty. Courts have also rejected the notion that a DVPO infringes on a respondent's freedom of movement or right to travel.

- "Although assaultive conduct may lie at the heart of a petitioner's request for a domestic violence protection order, the remedy sought, an order prohibiting contact, is not a massive curtailment of liberty amounting to incarceration and is not criminal in nature."

  ↳ *Blackmon v. Blackmon*, 155 Wn. App. 715, 721, 230 P.3d 233 (2010).

- "[T]he protection order authorized by chapter 26.50 RCW does not result in a massive curtailment of [the respondent's] liberty."

  ↳ *Spence v. Kaminski*, 103 Wn. App. 325, 332, 12 P.3d 1030 (2000).

- "[T]he protection order here does not intrude on a substantial privacy interest of [respondent]."

  ↳ *Id.* at 335.

- "The protection order does not interfere with [respondent's] legitimate freedom of movement or right to travel. It, like the stalking statute, is a reasonable exercise of police power requiring one person's freedom of movement to give way to another person's freedom not to be disturbed."

  ↳ *Id.* at 336.

Constitutionality of DVPOs

In ***State v. Karas***, 108 Wn. App. 692, 32 P.3d 1016 (2001), the Court of Appeals for Division II rejected arguments that the Domestic Violence Prevention Act was unconstitutional. This ruling was made in a criminal case where a domestic violence abuser was convicted with violating a DVPO that had been issued pursuant to RCW 26.50.

The *Karas* court noted:

- The Domestic Violence Prevention Act's "provisions satisfy the two fundamental requirements of due process – notice and a meaningful opportunity to be heard by a neutral decision maker."
    - ↳ *Id.* at 699.
- The Act "reflects the legislative determination that the public has an interest in preventing domestic violence," and "'[w]hen the purpose of legislation is to promote the health, safety and welfare of the public and bears a reasonable and substantial relationship to its purpose, every presumption must be indulged in favor of constitutionality.'"
    - ↳ *Id.* at 700 (quoting *State v. Lee*, 135 Wn.2d 369, 390, 957 P.2d 741 (1998)).
- Commissioners have the statutory and constitutional authority to issue protection orders.
    - ↳ *Id.* at 701-02.

Continuances or Stays of DVPO Hearings

It is not uncommon for a respondent in a DVPO proceeding to ask the court for a continuance or a stay of the proceedings because the respondent is facing criminal charges for domestic violence. In some cases, courts have repeatedly granted continuances and have re-issued multiple "temporary" DVPOs while the criminal case is pending. This practice imposes a serious burden on survivors, who must often return to court to maintain protection.

In ***Smith v. Smith***, 1 Wn. App. 2d 122, 404 P.3d 101 (2017), the Court of Appeals for Division I held that a trial court properly denied a respondent's request for a stay of a DVPO hearing until a parallel criminal case against him was completed.

In reaching this decision, the Court noted:

- "The mere pendency of parallel civil and criminal cases does not entitle the defendant to a stay of the civil case. Instead, a trial court considering a stay request must consider and balance the eight factors identified by this court in *King v. Olympic Pipe Line Co."*
    - ↳ *Smith v. Smith*, 1 Wn. App. 2d 122,126-127, 404 P.3d 101 (2017).
- "A court exercises discretion when deciding a request to stay proceedings," which is reviewed for abuse of discretion.
    - ↳ *Id.* at 130.
- In considering a stay request, the court must apply the *Olympia Pipe Line* balancing test on the record, which consists of eight nonexclusive factors: (1) the extent to which a defendant's Fifth Amendment rights are implicated; (2) the similarities between the civil and criminal cases; (3) the status of the criminal case; (4) the interest of the plaintiffs in proceeding expeditiously and the potential prejudice to plaintiffs of delay; (5) the burden that any particular aspect of the proceeding may impose on the defendants; (6) the convenience of the court in the management of its cases and the efficient use of judicial resources; (7) the interests of persons not parties to the civil litigation; and (8) the interest of the public in the pending civil and criminal litigation.
    - ↳ *Id.* at 130.
- "The process created by the DVPA burdens the defendant's *Fifth Amendment* privilege substantially less than do other civil proceedings" because the plaintiff cannot compel evidence or testimony.
    - ↳ *Id.* at 131 (emphasis in original).
- "[D]elaying DVPO proceedings denies plaintiffs their right to meaningfully access the courts."
    - ↳ *Id.* at 134.
- "[D]elaying proceedings hinders victims' ability to act pro se…. When a court repeatedly continues DVPO proceedings, the system becomes too challenging to navigate and pro

se litigants are forced to either abandon their claims or seek pro bono or hired counsel if they are able."

↳ *Id.* at 135.

- "[D]elaying DVPO matters places victims and their families at risk. 'Prolonged court proceedings increase the risk of danger to a victim of domestic violence.'"

  ↳ *Id.* at 135-36 (quoting *Juarez v. Juarez*, 195 Wn. App. 880, 889, 382 P.3d 13 (2016)).

- A criminal no-contact order "does not provide as much protection as a DVPO."

  ↳ *Id.* at 136.

- "[D]elay may cause victims to abandon their petition due to exhaustion or frustration, or as a result of logistical obstacles. For example, a victim may not be able to take time off work repeatedly or find childcare or transportation to address each continuance."

  ↳ *Id.* at 108.

- "[T]he DVPA states that relief under the DVPA 'shall not be denied or delayed on the grounds that the relief is available in another action.' The DVPA therefore explicitly prohibits the trial court from delaying DVPO proceedings based on the rationale that the issues underlying that DVPO matter could be resolved in another proceeding."

  ↳ *Id.* at 139.

- "Denying a full protection order because of the defendant's pending parallel criminal proceedings neither honors the purpose of the DVPA nor serves the public interest of ensuring victims of domestic violence have access to an expedited process for receiving a protection order."

  ↳ *Id.* at 140.

- "[S]taying DVPO proceedings frustrates the purpose of the DVPA – to provide quick and effective access to the judicial system to victims of domestic violence."

  ↳ *Id.* at 141.

Cross-examination in DVPO Hearings

Cross-examination is not required by statute in DVPO proceedings. The need for cross-examination is a matter of discretion for trial courts, weighing the factors set forth by ***Mathews v. Eldridge.***

- "We leave the decision whether to allow cross-examination in domestic violence protection order hearings to the sound discretion of a commissioner or trial court judge subject to the normal provision for review or revision."

  ↳ *Aiken v. Aiken*, 187 Wn.2d 491, 497, 387 P.3d 680 (2017).

- "[W]e hold that chapter 26.50 RCW does not require a trial judge to allow live testimony or cross-examination in every protective order proceeding. Instead, whether live testimony or cross-examination is required will turn on the *Mathews* balancing test."

  ↳ *Id*. at 499.

- "Cross-examination is a powerful instrument in eliciting truth or discovering error in statements. *State v. Eddon*, 8 Wash. 292, 301, 36 P. 139 (1894). However, cross-examination may also be used for purposes other than truth seeking. 'The nature and purpose of witness examination, however, are to elicit honest testimony, not fearful responses, and to procure the truth, not cause intimidation.' *State v. Foster*, 135 Wn.2d 441, 465, 957 P.2d 712 (1998) (plurality opinion)."

  ↳ *Id*. at 505.

- "As part of the *Mathews* balancing test, trial court judges and commissioners should specifically weigh the likely value of cross-examination against the potential damage that testifying may have on the specific child. A bright line rule prohibiting cross-examination or live testimony in protective order hearings is inappropriate, as it is the province of the trial judge or commissioner to grant or deny cross-examination based on individualized inquiries into the facts of the instant case."

  ↳ *Id*. at 505-06.

- "The legislature has carefully enacted protection order procedures in the hope of protecting the important interests implicated. Judges and commissioners must exercise discretion to determine whether cross-examination is necessary in a particular case to protect the rights involved; their judgment is crucial in such delicate proceedings."

  ↳ *Gourley v. Gourley*, 158 Wn.2d 460, 470-71, 145 P.3d 1185 (2006).

- "[I]n *Gourley*, our Supreme Court held that although a trial court has discretion to allow it, the Domestic Violence Prevention Act does not create a right for petitioners and respondents to subpoena or cross-examine witnesses."

  ↳ *Blackmon v. Blackmon*, 155 Wn. App. 715, 722, 230 P.3d 233 (2010).

- *See also Smith v. Smith*, 1 Wn. App. 2d 122, 131, 404 P.3d 101 (2017) (noting that in DVPO proceedings, parties do not have a right to cross-examine witnesses, although trial court has discretion to allow cross-examination).

Definitions – Statutory Terms

RCW 26.50.010 provides definitions for several terms used in DVPO proceedings, including but not limited to, definitions of the terms "domestic violence," "dating relationship," and "family or household members." However, courts must sometimes interpret the meaning of terms that are defined in RCW 26.50, as well as terms that are not defined by statute.

"Domestic Violence"

- "RCW 26.50.010(a) defines domestic violence to include: 'Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members.' There is no allegation that [respondent] assaulted his children. But the children witnessed [respondent's] assaults on [their mother], and were afraid for her…. [T]here was ample evidence that [respondent] caused his children to fear he would assault [their mother]. Such fear is indeed psychological harm, as the trial court termed it. It is also domestic violence, and is a statutory basis for an order of protection."

  ↳ *In re Marriage of* Stewart, 133 Wn. App. 545, 551, 137 P.3d 25 (2006).

  - **Note: "**[T]he holding of *Stewart* – that imminent psychological harm to children is a proper statutory basis for a protection order – is not limited to the facts of that case."

    ↳ *Maldonado v. Maldonado*, 197 Wn. App. 779, 791-92, 391 P.3d 546 (2017).

- "The definition of domestic violence includes not only physical harm but also 'the infliction of fear of imminent physical harm, bodily injury or assault.' RCW 26.50.010(3)(a)."

  ↳ *Maldonado v. Maldonado*, 197 Wn. App. 779, 791, 391 P.3d 546 (2017).

- "[Petitioner] petitioned for protection on behalf of her two-year-old son, arguing that [respondent's] repeated threats against her son constitute 'domestic violence' under the plain language of RCW 26.50.010(3) and that she may petition for a protection order on her son's behalf based on her reasonable fear for him. We agree and reverse."

  ↳ *Rodriguez v. Zavala*, 188 Wn.2d 586, 588, 398 P.3d 1071 (2017).

- "When read together, the relevant provisions explain that any person may petition for protection by alleging that the person has been the victim of 'domestic violence' – that is, the infliction of fear of imminent physical harm between family member. RCW 26.50.020(1)9a), .010(3)(a).

  But the definition does not state that this fear must be between a petitioner and a perpetrator. Indeed, the statute's definition lists fear between family or household

members without restriction. Because domestic violence includes the infliction of fear or harm *between family members* generally, the definition includes a mother's fear of harm to her child by that child's father. The language of the definition is plain and unambiguous."

↳ *Id*. at 591-92 (*emphasis in original*).

- "The context of the statute, related provisions, and statutory scheme as a whole also indicate that 'domestic violence' in RCW 26.50.010(3) was intended to cover more than merely a petitioner and a perpetrator. A person may seek a protection order 'on behalf of minor family or household members' under RCW 26.50.020(1)(a). RCW 26.50.010(6) defines 'family or household members' broadly to include an individual's current and former spouses and domestic partners, individuals with a child in common regardless of marital status, adult persons related by blood or marriage, adult persons presently or previously residing together, dating relationships, and those with biological or legal parent-child relationships (including stepparents and stepchildren and grandparents and grandchildren). This definition reflects the legislative recognition that violence in the home encompasses many different familial and household roles; violence does not distinguish on the basis of relationships."

↳ *Id*. at 592-93.

- "Moreover, a person does not have to be a victim of domestic violence to be included in a protection order. RCW 26.50.060 affords trial courts substantial discretion to protect victims and their loved ones. The provision explains that a trial court may bar a respondent from going to the 'day care or school of a child' or having 'any contact with the victim of domestic violence or the victim's children or members of the victim's household' and that, notably, the court may order 'other relief as it deems necessary for the protection of the petitioner and other family or household members sought to be protected.' RCW 26.50.060(1)(b), (h), (f). If the Court of Appeals' reading of 'domestic violence' is correct and an individual must personally appreciate the threat of violence to be included in a protection order, it makes little sense for the legislature to enact .060(1)(b), (h), and (f), provisions that specifically protect those who are not victims and were not present when the violence or threat of violence occurred. The Court of Appeals' interpretation would render these sections meaningless. *Cf. Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996) statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous)."

↳ *Id*. at 593.

- The legislative intent of the Domestic Violence Prevention Act (DVPA) (ch. 26.50 RCW) further supports that 'domestic violence' includes a petitioner's fear of harm between family members. Washington lawmakers expressly found that '[d]omestic violence is a problem of immense proportions affecting individuals as well as communities.' Laws of 1992, ch. 111, § 1. 'Domestic violence must be addressed more widely and more effectively in our state: Greater knowledge by professionals who deal frequently with

domestic violence is essential…. to reduce and prevent domestic violence by intervening before the violence becomes severe' and 'to encourage domestic violence victims to end abuse, leave their abusers, [and] protect their children.' *Id*.; *Danny v. Laidlaw Transit Servs., Inc.*, 165 Wn.2d 200, 213, 193 P.3d 128 (2008) (plurality opinion). These goals are thwarted by excluding a threatened child from a protection order because that child may not have known of the threat or was too young to speak. In this case, Zavala assaulted Rodriguez when she was pregnant with L.Z., and also threatened to kidnap and kill the child. In light of the legislature's findings, Rodriguez's petition presented the statutorily appropriate time to intervene—before Zavala's violent threats against L.Z. escalated to more violent acts."

↳ *Id*. at 593-94.

- "The plain language of RCW 26.50.010(3), related statutes, and the statutory scheme demonstrate that the definition of 'domestic violence' allows a petitioner to seek relief based on a general fear of harm between family members. To conclude that 'domestic violence' means the fear possessed only by the one seeking protection not only conflicts with the statute's plain language, it would leave unprotected a vulnerable population: threatened children. Even more acutely, such an interpretation would fail to protect infants and developmentally delayed children. These are the most vulnerable of our vulnerable populations. Excluding these children from protection orders because they fail to or cannot show fear of a harm they may not understand subjects them to violence the legislature expressly intended to prevent."

  ↳ *Id*. at 594.

- "We hold that exposure to domestic violence is harmful under the DVPA. The harm caused by domestic violence can be physical or psychological. As discussed above, RCW 26.50.010(3) defines 'domestic violence' as '[p]hysical harm…. or the infliction of fear of imminent physical harm, bodily injury, or assault.' At least one Washington court has held a child's fear for a parent brought about by witnessing one parent assault the other is a psychological harm that qualifies as domestic violence and is a statutory basis for a protection order. *In re Marriage of Stewart*, 133 Wn. App. 545, 551, 137 P.3d 25 2006). According to *Stewart*, a child is psychologically harmed or placed in fear by observing violence against a family member."

  ↳ *Id*. at 596.

"Full Hearing"

- "The term 'full hearing' is not defined in chapter 26.50 RCW, but it is used twice. When the term is used, it is juxtaposed against the "ex parte" hearing necessary for a temporary protection order. RCW 26.50.020(5), .070(1), (4). First, it is used in the statute concerning the jurisdiction of the district and municipal courts in protection order proceedings. RCW 26.50.020(5). This provision explains that where the district or municipal court jurisdiction is limited to issuance of a temporary order, the court must

"set the *full hearing* provided for in RCW 26.50.050 in superior court and transfer the case." *Id*. (emphasis added). Second, RCW 26.50.070(1) explains that where appropriate, the court can grant an ex parte temporary order for protection 'pending a full hearing.' 'A full hearing, as provided in this chapter, shall be set for not later than fourteen days from the issuance of the temporary order…' RCW 26.50.070(4).

Neither RCW 26.50.050 nor any other section of the statute defines the term 'full hearing' or explains the procedural form a hearing must take. RCW 26.50.050 allows a party to attend a hearing via telephone to accommodate a disability or, in extreme cases, to prevent further domestic violence. That section also sets forth service requirements. It does not require that the judge take testimony. See RCW 26.50.050. Instead, it contemplates that both sides will be able to offer appropriate argument and evidence within the proper discretion of the trial court. We conclude that there is no statutory right to cross-examine a minor in a protection order proceeding."

↳ *Aiken v. Aiken*, 187 Wn.2d 491, 500-01, 387 P.3d 680 (2017).

Discovery in DVPO Proceedings

In ***Scheib v. Crosby***, 160 Wn. App. 345, 249 P.3d 184 (2011), the Court of Appeals recognized that DVPO cases are "special proceedings" within the meaning of Civil Rule 81. This means that a party in a DVPO case is not entitled to discovery under the Civil Rules in a DVPO case. A party must get permission from the court in order to engage in discovery.

- Domestic Violence Protection Act (DVPA) protection order proceedings are special proceedings to which the Civil Rules, including the discovery rules, do not apply.
    - ↳ *Scheib v. Crosby*, 160 Wn. App. 345, 351-52, 249 P.3d 184 (2011).
- In DV protection order proceedings, trial court has "the inherent authority and discretion to decide the nature and extent of any discovery." Decisions to deny discovery in such proceedings are reviewed for abuse of discretion.
    - ↳ *Id*. at 352-53.
- *See also Smith v. Smith*, 1 Wn. App. 2d 122, 132, 404 P.3d 101 (2017) (citing *Scheib* and noting that in DVPO proceedings, parties do not have a right to discovery, although the trial court has discretion to allow discovery).

Due Process

The Washington Supreme Court has considered the due process requirements of DVPOs in two cases: (1) ***Gourley v. Gourley***, 158 Wn.2d 460, 145 P.3d 1185 (2006); and (2) ***Aiken v. Aiken***, 187 Wn.2d 291, 387 P.3d 680 (2017).

The *Gourley* decision was a plurality opinion that "resulted in five opinions, none garnering more than four signatures." *Aiken*, 187 Wn.2d at 498. The Court in *Aiken* specifically stated that "[w]e take this opportunity to clarify the ultimate holding of *Gourley*." *Id.* at 497. As a result, *Aiken* should be regarded as a more recent and authoritative holding.

- "Safeguards for both those seeking protective orders and those subject to them are built into chapter 26.50 RCW. The petitioner must allege domestic violence by an affidavit under oath, stating specific facts and circumstances from which relief is sought. RCW 26.50.030(1). The court must order a hearing within 14 or 24 days upon receipt of the petition, depending on the type of service. RCW 26.50.050. The respondent must be served at least five days before the hearing. *Id*. But where the petition alleges that 'irreparable injury' could occur, the court may grant an 'ex parte temporary order for protection, pending a full hearing.' RCW 26.50.070(1). The ex parte temporary order generally may not exceed 14 days, but it can be continued if the hearing is continued. RCW 26.50.070(4). After this hearing, the court may issue a protection order excluding the respondent from a dwelling, prohibiting the respondent from coming within a certain distance from the petitioner or a minor child, restraining the respondent from having any contact with the petitioner or minor child, and granting other relief as appropriate. *See* RCW 26.50.060(1). Where a protection order restrains an individual from contacting his or her minor children, the restraint must be for a fixed period not to exceed one year, renewable after another hearing. RCW 26.50.060(2).

    ↳ *Aiken v. Aiken*, 187 Wn.2d 491, 497-98, 387 P.3d 680 (2017).

- "Due process is a flexible concept; the level of procedural protection varies based on circumstance. In evaluating the process due in a particular situation, we consider (1) the private interest impacted by the government action, (2) 'the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards,' and (3) the government interest, including the additional burden that added procedural safeguards would entail."

    ↳ *Id*. at 501-02 (internal citations omitted).

- "In the present case, Mr. Gourley claims a fundamental right to make decisions concerning the care, custody, and control of his children. However, the possible length of the deprivation of the interest is also an important factor in the *Mathews* test. Thus, we must consider that Mr. Gourley's right was only temporarily restrained by the protection order. On its face, the duration of the protection order was only one year, and the order was further subject to orders issued in the dissolution action."

- ↳ *Gourley v. Gourley*, 158 Wn.2d 460, 468, 145 P.3d 1185 (internal citations omitted).

- "While Mr. Gourley has an important interest in the case, custody, and control of his children, the government has a compelling interest in preventing domestic violence or abuse. Laws of 1993, ch. 350 § 1 ('[D]omestic violence is a problem of immense proportions affecting individuals as well as communities. [It costs] lives as well as millions of dollars each year.... for health care, absence from work, and services to children.').
  - ↳ *Id.* at 468.
- "The due process requirements of being heard at a meaningful time and in a meaningful manner are protected by the procedures outlined in chapter 26.50 RCW."
  - ↳ *Id.* (outlining procedural protections at greater length).
- *See also Smith v. Smith*, 1 Wn. App. 2d 122, 142, 404 P.3d 101 (2017) (*citing Aiken and Gourley* to reject arguments that the DVPA violates due process).

Duration of DVPOs

- "The duration of a domestic violence protection order is specified by the statute. It provides that if a protection order 'restrains the respondent from contacting the respondent's minor children,' the restraint shall be for a fixed period not to exceed one year. RCW 26.50.060(2). For other forms of relief or restraint, the court may order protection for a longer fixed period or permanently if the court finds that the respondent 'is likely to resume acts of domestic violence against the petitioner or the petitioner's family or household members or minor children when the order expires.' RCW 26.50.060(2)."

    ↳ *Maldonado v. Maldonado*, 197 Wn. App. 779, 793, 391 P.3d 546 (2017).

- "[L]imiting the duration of the protection order in deference to a separate marital dissolution proceeding contradicts RCW 26.50.025(2)."

    ↳ *Juarez v. Juarez*, 195 Wn. App. 880, 888, 382 P.3d 13 (2016).

        - "We join the *Juarez* court in that holding." *Maldonado*, 197 Wn. App. at 793.

- "[Petitioner] contends the statute establishes a presumption that domestic violence protection orders be entered for at least one year. He requests that we direct the trial court on remand to enter a one-year order. The only reference in the statute to a one-year minimum is in the section concerning service of summons by publication. RCW 26.50.085(3). The legislative intent reflected in this section is to give notice that a protection order will be issued for a minimum of one year if there is no response to the summons. The section does not have a more general application. In a case not involving service by publication, the trial court need not grant a one-year order if tenable grounds support the refusal. *Juarez*, 195 Wn. App. at 891."

    ↳ *Maldonado v. Maldonado*, 197 Wn. App. 779, 796-97, 391 P.3d 546 (2017).

Evidence Rules –
Need Not Be Applied in DVPO Proceedings

Evidence Rule 1101(c)(4) provides that the rules of evidence need not be applied in domestic violence protection order cases under RCW 26.50. Washington courts have repeatedly underscored this point.

- "We reject Mr. Gourley's hearsay challenge because ER 1101(c)(4) allows courts to consider hearsay in protection order proceedings."
    - ↳ *Gourley v. Gourley*, 158 Wn.2d 460, 464, 145 P.3d 1185 (2006).
- "ER 1101(c)(4) allows courts to consider hearsay in a chapter 26.50 RCW protection order proceeding."
    - ↳ *Id.* at 466.
- "The plain language of the rule indicates that the rules of evidence need not be applied in protection order proceedings."
    - ↳ *Id.* at 467.
- "ER 1101 states that the rules of evidence need not be applied in protection order proceedings. Consequently, competent evidence sufficient to support the trial court's decision to grant or deny a petition for a domestic violence protection order may contain hearsay or be wholly documentary."
    - ↳ *Blackmon v. Blackmon*, 155 Wn. App. 715, 722, 230 P.3d 233 (2010) (internal citations omitted).
- "[T]he rules of evidence, including the hearsay rule, need not be applied in protection order proceedings under chapter 26.50 RCW. ER 1101(c)(4)."
    - ↳ *Hecker v. Cortinas*, 110 Wn. App. 865, 870, 43 P.3d 50 (2002).
- "Hearsay evidence is admissible in the protection order proceedings listed in ER 1101(c)(4)."
    - ↳ *Maldonado v. Maldonado*, 197 Wn. App. 779, 792, 391 P.3d 546 (2017).

Firearms

RCW 9.41.800(3) provides that when the trial court issues a domestic violence protection order that meets certain statutory conditions, the court must also order the restrained person to surrender all firearms and other dangerous weapons.

- "The issues on appeal concern the statutory provisions, enacted in 2014, to restrict access to firearms by persons subject to domestic violence protection orders. Laws of 2014, ch. 111. Under RCW 9.41.800(3), when the court issues a domestic violence protection order that meets certain statutory conditions, the court must also order the restrained person to surrender all firearms and other dangerous weapons:

  > [T]he court shall:
  > (A) Require the party to surrender any firearm or other dangerous weapon;
  > (B) Require the party to surrender a concealed pistol license issued under RCW 9.41.070;
  > (C) Prohibit the party from obtaining or possessing a firearm or other dangerous weapon; and
  > (D) Prohibit the party from obtaining or possessing a concealed pistol license."

  ↳ *Braatz v. Braatz*, 2 Wn. App. 2d 889, 895, 413 P.3d 612 (2018).

- "Possession of a firearm while subject to a qualifying domestic violence restraining order constitutes unlawful possession of a firearm in the second degree. RCW 9.41.040(2)(a)."

  ↳ *Id*. at 895-96.

- "A party ordered to surrender weapons must file 'a proof of surrender and receipt form' within five days of the entry of the order. RCW 9.41.804."

  ↳ *Id*. at 896.

- "The AOC also developed a standard order to surrender weapons form…This form, which the trial court used in this case, orders the restrained person to immediately surrender 'all firearms and other dangerous weapons in [his or her] possession or control.'…The order instructs the restrained person to take four steps:

  > Step 1: Immediately turn in the weapons and CPL [(concealed pistol license)].
  > Step 2: Get a receipt for the weapons and CPL from law enforcement or court designated person;
  > Step 3: Complete the Proof of Surrender form and attach the receipt.
  > Step 4: File the documents with the clerk of the court within 5 days."

  ↳ *Id*. at 896-97.

- "The statutory provisions do not expressly allocate the burden of proof. But, taken together, these provisions indicate that **the restrained person has the burden to prove that he or she has surrendered all firearms and other dangerous weapons**."

    ↳ *Id*. at 897 (emphasis added).

- "**Nothing in the statutory scheme, however, indicates that a proof of surrender form is conclusive evidence of compliance or that filing such a form shifts the burden of proof**. Such a reading would be contrary to both common sense and the purpose of the surrender weapons provision. See *Dep't of Labor and Indus. v. Rowley*, 185 Wash.2d 186, 204, 378 P.3d 139 (2016) (stating that, in civil matters, the burden of proof is allocated based on common sense and policy concerns (citing 5 Karl B. Tegland, Washington Practice: Evidence Law and Practice § 301.2, at 193 (5th ed. 2007))."

    ↳ *Id*. at 898 (emphasis added).

- "**In determining whether a person has complied with an order to surrender weapons, the issue is not whether the person has filed a proof of surrender form but whether the person has surrendered all of his or her weapons**. A proof of surrender form provides evidence of compliance but does not, in itself, prove that the person has surrendered all of their weapons."

    ↳ *Id.* (emphasis added).

- "We conclude that **the party ordered to surrender weapons has the burden to prove compliance**. Because this is a civil matter**, we apply the preponderance of the evidence standard.** See *Rowley*, 185 Wash.2d at 208-09, 378 P.3d 139 (preponderance of the evidence generally applies in civil law)."

    ↳ *Id*. (emphasis added).

- "The **proof of surrender form and receipt, which the party must file pursuant to RCW 9.41.804, serve as prima facie evidence that the party has surrendered his or her weapons**. But where the record contains conflicting evidence, the court must weigh that evidence and determine whether the restrained party has met his or her burden of proof."

    ↳ *Id*. at 898-99 (emphasis added).

- "In determining whether [the restrained party] was in compliance with the surrender weapons order, the factual question before the court was whether [the restrained party] had surrendered all of his firearms, other dangerous weapons, and any concealed pistol license. **[The restrained party's] efforts to surrender weapons are not relevant to this determination**. **To the extent the trial court ruled that [the restrained party] was in compliance with the order to surrender weapons because he made efforts to comply, it was error.**"

    ↳ *Id*. at 899 (emphasis added).

Jury Trial – No Right in DVPO Proceedings

There is no right to a jury trial in a DVPO proceeding.

- "Because protection orders are essentially injunctive and involve an equitable remedy, we hold that there is no right to a jury trial in a hearing on a petition for a domestic violence protection order."

    ↳ *Blackmon v. Blackmon*, 155 Wn. App. 715, 718, 230 P.3d 233 (2010).

- "In short, there is no right to a jury trial in a domestic violence protection order hearing because such proceeding is equitable in nature and may be properly determined by a court of documentary evidence alone."

    ↳ *Id.* at 723.

- *See also Smith v. Smith*, 1 Wn. App. 2d 122, 132, 404 P.3d 101 (citing *Blackmon* for the proposition that there is no right to a jury trial in DVPO proceedings).

Live Testimony in DVPO Proceedings

DVPO proceedings may be decided on documentary evidence. The trial judge has discretion to determine if live testimony is needed, applying the ***Mathews v. Eldridge*** balancing test.

- "[W]e hold that chapter 26.50 RCW does not require a trial judge to allow live testimony or cross-examination in every protective order proceeding. Instead, whether live testimony or cross-examination is required will turn on the *Mathews* balancing test."
    - ↳ *Aiken v. Aiken*, 187 Wn.2d 491, 499, 387 P.3d 680 (2017).
- A DVPO proceeding "is equitable in nature and may be properly determined by a court on documentary evidence alone."
    - ↳ *Blackmon v. Blackmon*, 155 Wn. App. 715, 723, 230 P.3d 233 (2010) (note: this statement was made in the context of explaining why there is no right to a jury trial in DVPO proceedings).
- *See also Smith v. Smith*, 1 Wn. App. 2d 122, 131, 404 P.3d 101 (2017) (noting that in DVPO proceedings, parties do not have a right to compel live testimony, although trial court has discretion to allow it).

Parenting Plans –
DVPOs Are *Not* Modifications of Parenting Plans

When a DVPO petitioner and respondent have a child in common, they may already have a parenting plan in place for that child when the petitioner seeks a DVPO. Washington courts have made it clear that a court may issue a DVPO that includes a child when a parenting plan is in place, but the DVPO must be limited in duration and is not a modification of the parenting plan.

- "Under chapter 26.50 RCW, a domestic violence protection order may temporarily prohibit contact between a parent and his or her minor children. Such an order is not an impermissible modification of a parenting plan."

  ↳ *In re Marriage of Stewart*, 133 Wn. App. 545, 547, 137 P.3d 25 (2006).

  - ***But note:*** Protection orders may not function as "de facto modifications of permanent parenting plans and child support decrees." *In re Marriage of Barone*, 100 Wn. App. 241, 247, 996 P.2d 654 (2000).

- "When a protection order affects contact with children, the court must consider the best interests of the children and the other factors set forth in the Parenting Act of 1987, chapter 26.09: 'On the same basis as is provided in chapter 26.09 RCW, the court shall make residential provision with regard to minor children of the parties. However, parenting plans as specified in chapter 26.09 RCW shall not be required under this chapter.'"

  ↳ *In re Marriage of Stewart*, 133 Wn. App. 545, 552, 137 P.3d 25 (2006).

- The Domestic Violence Prevention Act (RCW 26.50) and the Parenting Act (RCW 26.09) are "entirely consistent."

  "RCW 26.09.191(2)(a) provides that in parenting plans, residential time with a child must be restrict where there is a pattern of emotional abuse of the child or a history of acts of domestic violence:

  > *The parent's residential time with the child shall be limited if it is found that the parent has engaged in* any of the following conduct: (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting function; (ii) physical, sexual, or a *pattern of emotional abuse of a child; (iii) a history of acts of domestic violence as defined in RCW 26.50.010(1)* or an assault or sexual assault which causes grievous bodily harm or the fear of such harm....

This provision incorporates the definitions of domestic violence contained in the protection order statute. Authorizing the domestic violence protection order court to restrict contact is thus entirely congruent with the Parenting Act."

↳ *Id.* at 553-54 (emphasis in original).

- "We agree that a protection order cannot actually suspend a parenting plan. Nor can it impose a long-term restriction on parental contact with a minor child, or otherwise affect the terms of the parenting plan."

  ↳ *Id.* at 554.

- "A temporary suspension pending further proceedings is not a de facto modification."

  ↳ *Id.* at 554.

- "[T]he Parenting Act specifically contemplates that the modification court will consider the existing protection orders: 'The weight given to the existence of a protection order issued under RCW 26.50 as to domestic violence is within the discretion of the court.'"

  ↳ *Id.* at 555.

- "The order temporarily suspending [the respondent's] contact with his children under [the parties] parenting plan was a proper exercise of the court's discretion."

  ↳ *Id*.

- "The duration of a domestic violence protection order is specified by the statute. It provides that if a protection order 'restrains the respondent from contacting the respondent's minor children,' the restraint shall be for a fixed period not to exceed on year. RCW 26.50.060(2)."

  ↳ *Maldonado v. Maldonado*, 197 Wn. App. 779, 793, 391 P.3d 546 (2017).

- "As explained in *Stewart*, *Barone* addresses a child support issue and is not pertinent to establishing the duration of a protective order. A one-year order is a temporary interruption of contact, not a de facto modification of an existing parenting plan. 'No rational person would voice an objection to temporary suspension of contact where a person has physically abused his children. The legislature considers domestic violence by way of infliction of fear to be equally worthy of swift intervention.'"

  ↳ *Id.* at 794 (internal citations omitted).

Public Policy Considerations

Washington courts have repeatedly noted the important public policies served by DVPOs.

- "The Legislature has clearly indicated that there is a public interest in domestic violence protection orders. In its statement of intent for RCW 26.50, the Legislature stated that domestic violence, including violations of protective orders, is expressly a public, as well as private, problem, stating that:

  > Domestic violence is a problem of immense proportions affecting individuals as well as communities. Domestic violence has long been recognized as being at the core of other major social problems: Child abuse, other crimes of violence against person or property, juvenile delinquency, and alcohol and drug abuse. Domestic violence costs millions of dollars each year in the state of Washington for health care, absence from work, services to children, and more."

  ↳ *State v. Dejarlais***,** 136 Wn.2d 939, 944, 969 P.2d 90 (1998) (quoting Laws of 1992, ch. 111, §1).

- "Protection order proceedings are designed to provide emergency relief to domestic violence victims and their children. Because many victims are unable to retain counsel, the system is designed for use by pro se litigants."

  ↳ *Aiken v. Aiken*, 187 Wn.2d 491, 497, 387 P.3d 680 (2017) (internal citations omitted).

- "In 1984, soon after enacting the [Domestic Violence Act], the legislature enacted a separate Domestic Violence Prevention Act (DVPA), chapter 26.50 RCW, to provide domestic violence victims with the ability to obtain a civil protection order against their abusers. RCW 26.50.030. The legislature recognized protection orders as 'a valuable tool to increase safety for victims and to hold batterers accountable.' Laws of 1992, ch. 111, §1. Significantly, it found that 'Domestic violence costs millions of dollars each year in the state of Washington for health care, *absence from work*, services to children, and more. The crisis is growing.' *Id.* (emphasis added). ('Domestic violence must be addressed more widely and effectively in our state.')."

  ↳ *Danny v. Laidlaw Transit Services., Inc.*, 165 Wn.2d 200, 209, 193 P.3d 128 (2008).

- "The legislature has since amended the DVPA several times to improve the protection order process 'so that victims have.... easy, quick, and effective access to the court system.' *Id.* The legislature has eliminated the filing fee requirement to 'increase victim's access to protection' and comply with the federal Violence Against Women Act (42 U.S.C. § 13701). S.B. Rep. on S.B. 5219, at 4, 54th Leg., Reg. Sess. (Wash. 1995). The legislature also amended the DVPA to give full faith and credit to out-of-state protection

orders to remove 'the barriers faced by persons entitled to protection.' RCW 26.52.005."

↳ *Id.* at 210.

- "The legislature's consistent pronouncements over the last 30 years evince a clear public policy to prevent domestic violence – a policy the legislature has sought to further by taking clear, concrete actions to encourage domestic violence victims to end abuse, leave their abusers, protect their children, and cooperate with law enforcement and prosecution efforts to hold the abuser accountable. The legislature has created means for domestic violence victims to obtain civil and criminal protection from abuse, established shelters and funded social and legal services aimed at helping victims leave their abusers, established treatment programs for batterers, created an address confidentiality system to ensure the safety of victims, and guaranteed protection to victims exercising their duty to cooperate with law enforcement. The legislature's creation of means to prevent, escape, and end abuse is indicative of its overall policy of preventing domestic violence. This public policy is even more pronounced when a parent seeks, with the aid of law enforcement and child protective services, to protect his or her children from abuse."

  ↳ *Id.* at 213.

- "The legislature has repeatedly and unequivocally declared that domestic violence is an immense problem that impacts entire communities. *E.g.*, Laws of 1992, ch. 111, §1 (declaring that '[d]omestic violence is a problem of immense proportions affecting individuals as well as communities'); Laws of 2004, ch. 17 § 1(1) ("Domestic violence, sexual assault, and stalking are widespread societal problems that have devastating effects for individual victims, their children, and their communities.'); RCW 10.99.010 (noting the 'serious consequences of domestic violence to society and to the victims'); Laws of 1991, ch. 301, §1 ('[T]he community has a vested interest in the methods used to stop and prevent future violence.'); *see also* Washington State Task force on Gender and Justice in the Courts, Final Report 18 (1989) (noting the idea that domestic violence is a 'family matter' is a gender biased belief)."

  ↳ *Id.* at 214-15.

- "This court has specifically recognized a public policy interest in preventing domestic violence." *State v. Dejarlais*, 136 Wn.2d 939, 944-45, 969 P.2d 90 (1998) (finding a clear statement of public policy to prevent domestic violence and holding that reconciliation may not void a domestic violence protection order); *In re Disciplinary Proceeding Against Turco*, 137 Wn.2d 227, 253 n.7, 970 P.2d 731 (1999) (holding that '[t]he Legislature has established a clear public policy with respect to the importance of societal sensitivity to domestic violence and its consequences"); *see also State v. Dejarlais*, 88 Wn. App. 297, 304, 944 P.2d 1110 (1997) ('The Legislature has clearly indicated that there is a public interest in domestic violence protection orders.'), *aff'd*, 136 Wn.2d 939, 969 P.2d 90 (1998).

  ↳ *Id.* at 217.

- "The legislative, judicial, and executive branches of government have repeatedly declared that it is the public policy of this state to prevent domestic violence by encouraging domestic violence victims to escape violent situations, protect children from abuse, report domestic violence to law enforcement, and assist efforts to hold their abusers accountable."

    ↳ *Id.* at 221.

- "Washington State has unequivocally established, through legislative, judicial, constitutional, and executive expressions, a clear mandate of public policy of protecting violence survivors and their families and holding abusers accountable."

    ↳ *Id.* at 227.

- "The legislature has articulated a clear public policy to protect domestic violence victims. *See* ch. 26.50 RCW; *see also* ch. 10.99 RCW (domestic violence official response act); RCW 10.99.010 ('The purpose of this chapter 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.')."

    ↳ *In re Marriage of Freeman*, 169 Wn.2d 664, 671-72, 239 P.3d 557 (2010) (superseded on other grounds by statute).

- "In 1984, the legislature enacted the Domestic Violence Prevention Act, chapter 26.50 RCW, to provide domestic violence victims with the ability to obtain a civil protection order against their abusers. RCW 26.50.030. The legislature recognized protection orders as 'a valuable tool to increase safety for victims and to hold batterers accountable.' Laws of 1992, ch. 111, §1. 'Domestic violence must be addressed more widely and more effectively in our state.' Laws of 1992, ch. 111, § 1. Since 1984, the legislature has amended the Domestic Violence Prevention Act several times to improve the protection order process 'so that victims have.... easy, quick, and effective access to the court system.' Laws of 1992, ch. 111, § 1. Through its action 'the legislature has sought to further [prevent domestic violence] by taking clear, concrete actions to encourage domestic violence to end abuse, leave their abusers, protect their children, and cooperate with law enforcement and prosecution efforts to hold the abuser accountable.' *Danny v. Laidlaw Transit Servs., Inc.*, 165 Wn.2d 200, 213, 193 P.3d 128 (2008)."

    ↳ *Juarez v. Juarez*, 195 Wn. App. 880, 888-89, 382 P.3d 13 (2016).

- "Prolonged court proceedings increase the risk of danger to a victim of domestic violence. Studies show an increased risk of homicide during extended divorce and child custody proceedings. Custody fights are 'notoriously volatile.' Increased contact with an abuser may increase the risk of harm to the victim."

    ↳ *Id.* at 889 (internal citations omitted).

- "The legislature intended for victims of domestic violence to have 'easy, quick, and effective access to the court system.' Laws of 1992, ch. 111, §1."

  ↳ *Maldonado v. Maldonado*, 197 Wn. App. 779, 793, 391 P.3d 546 (2017).

- "As a community, we have recognized the importance of domestic violence as an offense against our ordered society and we have committed to providing victims the maximum protection from abuse that the law and those who enforce the law can provide. RCW 10.99.010. A victim of abuse may seek this protection by filing a domestic violence protection order. RCW 26.50.020(1); *see generally* Laws of 1992, ch. 111."

  ↳ *Rodriguez v. Zavala*, 188 Wn.2d 586, 588, 398 P.3d 1071 (2017).

- "[T]he Legislature has shown that it has a strong interest in preventing domestic violence. A requirement that the victim must wait until further threatened acts actually occur before seeking a protection order would undermine that intent."

  ↳ *Spence v. Kaminski*, 103 Wn. App. 325, 335, 12 P.3d 1030 (2000).

- "A domestic violence protection order issued under RCW 26.50.... does not protect merely the 'private right' of the person named as petitioner in the order. In fact, the court recognized, the statute reflects the Legislature's belief that the public has an interest in preventing domestic violence."

  ↳ *State v. Dejarlais*, 136 Wn.2d 939, 943-44, 969 P.2d 90 (1998).

- "The legislature enacted the DVPA to expedite protection orders and provide victims 'easy, quick, and effective access to the court system.'"

  ↳ *Smith v. Smith*, 1 Wn. App. 2d 122, 135, 404 P.3d 101 (2017).

Purpose and Procedures

The purpose of DVPOs is to provide survivors of domestic violence meaningful and quick access to the courts. The procedures for DVPO hearings incorporate these purposes for survivors. (*See also* Public Policy section above).

Purpose of DVPOs

- "[T]he purpose of these proceedings is to provide persons who allege that they are victims of domestic violence with ready access to the protections of the court in allowing them to avoid contact with someone with whom they no longer wish to associate...."
    - ↳ *Blackmon v. Blackmon*, 155 Wn. App. 715, 722-23, 230 P.3d 233 (2010).
- "[A] protection order proceeding serves to provide a swift response to prevent further domestic abuse."
    - ↳ *In re Marriage of Stewart*, 133 Wn. App. 545, 551, 137 P.3d 25 (2006).
- "[T]he protection order proceeding is intended to be a rapid and efficient process."
    - ↳ *Id* at 552.

Procedures in DVPO Hearings

- "A sworn petition for a domestic violence protection order functions as a declaration."
    - ↳ *Maldonado v. Maldonado*, 197 Wn. App. 779, 791, 391 P.3d 546 (2017).
- "The petition for relief must allege 'the existence of domestic violence' and must be accompanied by an affidavit under oath that states specific facts and circumstances supporting relief. RCW 26.50.030(1)."
    - ↳ *Spence v. Kaminski*, 103 Wn. App. 325, 330, 12 P.3d 1030 (2000).
- "RCW 26.50.060 authorizes the trial court, after notice and a hearing, to issue a protection order."
    - ↳ *Id.* at 331.
- "The statute does not require any particular wording in the order. Beyond specifying the types of relief provided, the order is required only to specify the date it expires (if at all), the type and date of service of process used, and a notice of the criminal penalties resulting from violation of the order. On the other hand, if the court declines to issue an order for protection, it must 'state in writing on the order the particular reasons for the court's denial.'"

↳ *Id.* at 331 (internal citations omitted).

- Courts have rejected the argument that preprinted findings on a DVPO form are insufficient to indicate the factual basis for a court's decision.

  ↳ *Id.* at 332.

- "[T]he law compels a judge to perform her or his best and to issue a ruling as to whether domestic violence occurred and protection is needed. Although we recognize our trial judges as being overworked with crowded dockets, we trust our judges to take the time and conduct a hearing sufficient to arrive at the truth. We believe our trial judges normally possess the ability to find the truth."

  ↳ *Juarez v. Juarez*, 195 Wn. App. 880, 891-92, 382 P.3d 13 (2016).

Recent Acts of DV – Not Required for a DVPO

To obtain a DVPO, a petitioner is not required to prove that there was a "recent" act of domestic violence.

- "[The respondent] contends more than a history of domestic abuse is required. He argues that the statute implicitly requires proof of a recent act of domestic abuse, which is missing in this case. Without a recent act, he asserts, there is no abuser and no victim who needs protection. Neither the language of the statute nor legislative intent supports this requirement."
    - ↳ *Spence v. Kaminski*, 103 Wn. App. 325, 333, 12 P.3d 1030 (2000).
- "Nothing in these provisions requires a recent act of domestic violence."
    - ↳ *Id.* at 334.
- "In light of the Legislature's intent to intervene before injury occurs, and in recognition that RCW 26.50.020 and RCW 26.50.060 do not require an allegation of recent domestic violence, we decline to read into these statutes a requirement of a recent violent act."
    - ↳ *Id* at 334.
- "A new act of domestic violence is not required to obtain an extension of a protection order. Because petitioner made a showing of both past abuse and present fear of injury, she satisfied the statutory requirements and thus we find no abuse of discretion."
    - ↳ *Barber v. Barber*, 136 Wn. App. 512, 513, 150 P.3d 124 (2007).

Renewal of DVPOs

To renew a DVPO, a petitioner is not required to prove that there was "new" act of domestic violence since the original DVPO was entered.

- "A new act of domestic violence is not required to obtain an extension of a protection order. Because petitioner made a showing of both past abuse and present fear of injury, she satisfied the statutory requirements and thus we find no abuse of discretion."

  ↳ Barber v. Barber, 136 Wn. App. 512, 513, 150 P.3d 124 (2007).

- "[R]equiring a new act of domestic violence to support an extension would make an extension superfluous because a new act would plainly support a new order."

  ↳ *Id.* at 516.

If a party protected by a DVPO does not seek renewal of the DVPO before it expires, the protected party may still seek a new DVPO after the expiration of the previous DVPO. The protected party is not barred by res judicata from seeking a new protection order.

↳ *Muma v. Muma*, 115 Wn. App. 1, 6-7, 60 P.3d 592 (2002).

Short-term DVPOs

Washington appellate courts have made it clear that a trial court may not enter a "short-term" (e.g., very limited in duration) DVPO based on its view that the petitioner could seek protection in a family law case like a dissolution.

The two leading cases on this issue are ***Juarez v. Juarez***, 195 Wn. App. 880, 382 P.3d 13 (2016) and ***Maldonado v. Maldonado***, 197 Wn. App. 779, 391 P.3d 546 (2017).

- "This appeal asks the question of whether a trial court may enter short-term domestic violence protection orders in deference to other judicial proceedings on the expectation that a longer order will be entered in another proceeding. Based on the language of RCW 26.50.025(2), we answer in the negative."

  ↳ *Juarez v. Juarez*, 195 Wn. App. 880, 882, 382 P.3d 13 (2016).

- "[T]he tenor of RCW 26.50.025(2) directs the trial court to reject other available proceedings and remedies as an influence on the remedy granted in a Domestic Violence Prevention Act petition. Therefore, we hold that denying lengthy protection because of the available of other relief or the pendency of another court proceeding runs contrary to RCW 26.50.025(2))."

  ↳ *Id.* at 888 (construing RCW 26.50.0252(2), which provides that relief under the DVPA "shall not be denied or delayed on the grounds that the relief is available in another action.")

- "By not allowing the full one-year protection order, the trial court in essence denied partial relief. The trial court delayed the full relief requested by [petitioner]."

  ↳ *Id* at 888.

- "The purpose of statutory interpretation is to effectuate the legislature's intent. When determining the applicability of a statute, as in passing on the meaning of any legislative enactment, we look, in part, to the policy behind it. The policy behind the Domestic Violence Prevention Act bolsters a conclusion that limiting the duration of the protection order in deference to a separate marital dissolution proceeding contradicts RCW 26.50.024(2)."

  ↳ *Id.* at 888 (internal citations omitted).

- "Short-term protection orders entered in deference to other judicial proceedings require a victim to come to court multiple times to face her or his abuser. Prolonged court proceedings increase the risk of danger to a victim of domestic violence. Studies show an increased risk of homicide during extended divorce and child custody proceedings. Custody fights are 'notoriously volatile.' Increased contact with an abuser may increase the risk of harm to the victim. Thus, short-term relief does not fulfill the

legislative intent of Washington's Domestic Violence Prevention Act to afford victims of domestic violence with a valuable instrument to increase safety for victims."

↳ *Id.* at 889 (internal citations omitted).

- "The issuance of the short-term order exposed [the petitioner] to the potential for additional violence because she needed to return to court to repeatedly confront her abuser."

  ↳ *Id.* at 891.

- "[N]othing in the Domestic Violence Prevention Act empowers the trial court to shorten the duration of the relief because of some reasonable doubt."

  ↳ *Id.* at 891.

- "Relief is not to be 'denied or delayed on the grounds that the relief is available in another action.'"

  ↳ *Maldonado v. Maldonado*, 197 Wn. App. 779, 793, 391 P.3d 546 (2017) (quoting RCW 26.50.025(2)).

- "The majority opinion in *Juarez* correctly interprets RCW 26.50.025(2) in light of the purpose of the statute. Deferring the protection decision to another court in another action is too likely to create a gap endangering the safety of the person for whom protection is sought."

  ↳ *Id.* at 795.

- "The [DVPO] statute does not support requiring the party seeking protection to quickly initiate some other proceeding to avoid a gap in protection.... [A] court hearing a petition for a protection order in the first instance cannot count on some other proceeding being readily available to investigate the controversy more thoroughly."

  ↳ *Id.* at 796.

Special Proceedings –
DVPO Cases *Are* Special Proceedings

Washington courts have recognized that DVPO proceedings are "special proceedings" under Civil Rule 81.

- "Chapter 26.50 RCW is silent on what procedural rules apply under the DVPA, but reading the DVPA as a whole and applying extrinsic aids, it is apparent that this is a special proceeding not governed by the civil rules."

  ↳ *Scheib v. Crosby*, 160 Wn. App. 345, 350, 249 P.3d 184 (2011).

- "DVPO proceedings are 'special proceedings,' which means that rules of civil procedure established by the legislature for DVPOs supersede inconsistent civil court rules. For example, the Rules of Evidence do not apply in DVPO proceedings."

  ↳ *Smith v. Smith*, 1 Wn. App. 2d 122, 131-32, 404 P.3d 101 (2017).

Standards for Issuing or Denying DVPOs

- RCW 26.50 "does not require 'a pattern of conduct' or a 'continuity of purpose.'"
    - ↳ *Barber v. Barber*, 136 Wn. App. 512, 516, 150 P.3d 124 (2007).
- RCW 26.50 "does not require infliction of physical harm; rather, the infliction of 'fear' of physical harm is sufficient."
    - ↳ *Hecker v. Cortinas*, 110 Wn. App. 865, 870, 43 P.3d 50 (2002).
- A DVPO "may restrict contact between a parent and child, in which case the restraint may not exceed a maximum period of one year."
    - ↳ *In re Marriage of Stewart*, 133 Wn. App. 545, 550-51, 137 P.3d 25 (2006).
- "The legislature considers domestic violence by way of infliction of fear to be equally worthy of swift intervention" as physical abuse.
    - ↳ *Id.* at 555.
- "Because the record supports the trial court's conclusion that [respondent's] threat inflicted a reasonable fear of physical harm, the trial court did not abuse its discretion when it granted [petitioner's] motion for an order of protection."
    - ↳ *In re Parentage of T.W.J.*, 193 Wn. App. 1, 3, 367 P.3d 607 (2016).
- "But it is the trial court's role to weigh the persuasiveness of the evidence, and we typically will not disturb factual determinations on appeal."
    - ↳ *Id.* at 8 (rejecting respondent's argument that appellate court could not, as a matter of law, find his death threat credible absent additional evidence).
- "If the court declines to issue an order for protection or declines to renew an order for protection, the court shall state in writing on the order the particular reasons for the court's denial. RCW 26.50.060(7)."
    - ↳ *Maldonado v. Maldonado*, 197 Wn. App. 779, 790, 391 P.3d 546 (2017) (quoting RCW 26.50.060(7); A trial court violates this rule if it fails to state in writing its reasons for denying a protection order for one or more of the petitioners, even if the court granted a protection order for other petitioners).
- "Even when there is no evidence of a direct assault on a child, fear of violence is a form of domestic violence that will support an order for protection."
    - ↳ *Id* at 791.

Teen Dating Violence and DVPOs

In 2009, the Court of Appeals for Division III held that a DVPO could not be issued to protect a 14-year-old petitioner from a 17-year-old who she was dating. ***Neilson ex rel. Crump v. Blanchette***, 149 Wn. App. 111, 114, 201 P.3d 1089 (2009).

- Under the DVPA, "'family of household members' are defined, in relevant part, as 'persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship.' RCW 26.50.010(2)."

    ↳ *Id* at 115.

However, in 2010, the Legislature amended RCW 26.50.020, to provide "[a]ny person thirteen years of age or older may seek relief under this chapter by filing a petition with a court alleging that he or she has been the victim of violence in a dating relationship and the respondent is sixteen years of age or older." RCW 26.50.020(1)(b).

Terminating or Modifying DVPOs

The original version of RCW 26.50.130 allowed modification or termination of DVPOs, but provided no specific guidance on standards courts should use in determining whether to terminate or modify an order.

In the case of ***In re Marriage of Freeman***, 169 Wn.2d 664, 239 P.3d 557 (2010), the Washington Supreme Court adopted standards used by courts in New Jersey to determine whether to terminate a DVPO.

In response to the *Freeman* decision, the Legislature amended RCW 26.50.130 in 2011. The Legislature specifically stated in the intent section of the legislation:

- "The legislature finds that civil domestic violence protection orders are an essential tool for interrupting an abuser's ability to perpetrate domestic violence. The legislature has authorized courts to enter permanent or fixed term domestic violence protection orders if the court finds that the respondent is likely to resume acts of domestic violence when the order expires. However, the legislature has not established procedures or guidelines for terminating or modifying a protection order after it is entered.

  The legislature finds that some of the factors articulated in the Washington supreme court's decision in *In re Marriage of Freeman*, 169 Wn.2d 664, 239 P.3d 557 (2010), for terminating or modifying domestic violence protection orders do not demonstrate that a restrained person is unlikely to resume acts of domestic violence when the order expires, and place an improper burden on the person protected by the order. By this act, the legislature establishes procedures and guidelines for determining whether a domestic violence protection order should be terminated or modified."

  ↳ Laws of 2011, ch. 137 § 1.

As a result, ***the* Freeman *decision has been superseded by statute*** to the extent it articulated the factors that courts should consider in determining whether to terminate or modify a DVPO.

In 2019, the Court of Appeals for Division II's holding in ***Fowler v. Fowler*** thoroughly addressed a respondent's burden of proof and the relevant factors necessary for a respondent to modify or terminate a long-term DVPO. 8 Wn. App. 2d 225, 439 P.3d 701 (2019); RCW 26.50.130.

- "RCW 26.50.130(3)(a) states that the court may not terminate a permanent protection order 'unless the respondent proves by a preponderance of the evidence that there has been a substantial change in circumstances such that the respondent is not likely to resume acts of domestic violence against the petitioner.... if the order is terminated.'"

  ↳ *Fowler v. Fowler,* 8 Wn. App. 2d 225, 227-28, 439 P.3d 701 (2019).

- "For purposes of determining whether there has been a 'substantial change in circumstances,' the trial court must consider 'only factors which address whether the respondent is likely to commit future acts of domestic violence against the petitioner.' RCW 26.50.130(3)(b)."

  ↳ *Id* at 232.

- "The trial court may consider, in no particular order of importance, these unweighted factors:

  (i) Whether the respondent has committed or threatened domestic violence, sexual assault, stalking, or other violent acts since the protection order was entered;

  (ii) Whether the respondent has violated the terms of the protection order, and the time that has passed since the entry of the order;

  (iii) Whether the respondent has exhibited suicidal ideation or attempts since the protection order was entered;

  (iv) Whether the respondent has been convicted of criminal activity since the protection order was entered;

  (v) Whether the respondent has either acknowledged responsibility for the acts of domestic violence that resulted in entry of the protection order or successfully completed domestic violence perpetrator treatment or counseling since the protection order was entered;

  (vi) Whether the respondent has a continuing involvement with drug or alcohol abuse, if such abuse was a factor in the protection order;

  (vii) Whether the petitioner consents to terminating the protection order, provided that consent is given voluntarily and knowingly;

  (viii) Whether the respondent or petitioner has relocated to an area more distant from the other party, giving due consideration to the fact that acts of domestic violence may be committed from any distance;

  (ix) Other factors relating to a substantial change in circumstances."

  ↳ *Id*. at 232-33.

- "The trial court may not base its determination solely on the passage of time without a violation of the permanent protection order or the fact that one of the parties has relocated to an area more distant from the other. RCW 26.50.130(3)(d)."

  ↳ *Id.* at 233.

- "Finally, the court may decline to terminate a protection order even if there has been a substantial change in circumstances if the court 'finds that the acts of domestic violence that resulted in the issuance of the protection order were of such severity that the order should not be terminated.' RCW 26.50.130(3)(e)."

  ↳ *Id.*

- "RCW 26.50.130(1) states that a court 'may' terminate a protection order. Therefore, whether to terminate a permanent protection order is a matter of judicial discretion. We review for an abuse of discretion a trial court's order regarding termination of a permanent protection order. A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or reasons."

    ↳ *Id*. at 234 (internal citations omitted).

- "RCW 26.50.130(3)(c)(ii) relates to violations of the permanent protection order and the passage of time. The trial court found that [the restrained party] 'violated the terms of the protection order in February of 2006.'…[The restrained party] argues that the trial court improperly considered…[a] violation of the permanent protection order as a factor weighing against termination of the order because the violation was only a technicality and the charges were dropped. Based on the trial court's oral findings of fact, it does not appear that great weight was attributed to this factor. However, the court was within its discretion to consider this violation under RCW 26.50.130(3)(c)(ii)."

    ↳ *Id.* at 234-35 (internal citations omitted).

- "…RCW 26.50.130(3)(c)(v) provides that the court may consider whether the respondent has 'successfully completed domestic violence perpetrator treatment or counseling since the protection order was entered.' The statute does not state that the protection order must require the respondent to obtain treatment for the factor to be considered. Here, the court considered the evidence and concluded it was insufficient to find [the restrained party] had completed treatment since the …permanent protection order was entered. The court was within its discretion to consider this fact."

    ↳ *Id.* at 236.

- "Under RCW 26.50.130(3)(c)(vii), the trial court may consider '[w]hether the petitioner consents to terminating the protection order.' Although the statute requires the trial court to determine whether the petitioner's consent 'is given voluntarily and knowingly,' it does not require the court to determine whether the petitioner's lack of consent is reasonable or justified. RCW 26.50.130(3)(c)(vii)."

    ↳ *Id*. at 236-37.

- "RCW 26.50.130(3)(c)(viii) relates to whether one party has relocated to an area more distant from the other party. The trial court found that [the restrained party] 'has not relocated to an area more distant from [the protected party].... [the restrained party] bought a home which is very close in proximity to [the protected party's] home.' ....The trial court did not abuse its discretion in finding that [the restrained party's] close proximity to [the protected party] weighed against finding that he was less likely to resume acts of domestic violence against her."

    ↳ *Id*. at 237.

- "Under RCW 26.50.130(3)(c)(ix), the trial court has discretion to consider '[o]ther factors relating to a substantial change in circumstances' in determining whether to terminate

or modify a permanent protection order. In evaluating whether a 'substantial change in circumstances' exists, the court is limited to considering 'factors which address whether the respondent is likely to commit future acts of domestic violence against the petitioner or those persons protected by the protection order.'"

↳ *Id.* at 238.

- "The trial court found that [the restrained party] had sustained a long-term, healthy relationship with his current wife and had maintained his mental health condition and medication since entry of the permanent protection order. [The restrained party] argues that the court abused its discretion by not finding that these factors demonstrated a substantial change worthy of terminating the permanent protection order....

  The trial court properly considered these factors under RCW 26.50.130(3)(c)(ix). However, RCW 26.50.130(c) expressly provides that '[i]n determining whether there has been a substantial change in circumstances the court may consider the following *unweighted factors*, and *no inference is to be drawn from the order in which the factors are listed*.' (emphasis added). [The restrained party's] argument suggests that the trial court should have weighted these [above referenced] factors in his favor more heavily than those factors it found against him. The statute contains no such requirement. Therefore the trial court did not err in assigning its own weight to the factors it considered under RCW 26.50.130(3)(c)."

  ↳ *Id.* at 239-39.

- "The court apparently believed that the parties' agreement reflected an acknowledgement that there was a likelihood that [the restrained party] might resume acts of domestic violence in the future if the protection order was not in place. The trial court has discretion to consider various factors, and the court did not abuse its discretion in finding that [the restrained party's] consent to entry of the permanent protection order in 2003 weighed against terminating the order now."

  ↳ *Id*. at 239.

- [The restrained party] argues that the trial court failed to recognize… additional factors that supported termination of the permanent protection order… Although these factors may very well be relevant here, under RCW 26.50.130(3)(c) the trial court retains discretion in its analysis and weighing of the factors. The statute does not require the court to consider every potential factor put forward by the parties. Therefore, the trial court did not abuse its discretion in declining to consider these [additional] factors."

  ↳ *Id.* at 240.

- "[The restrained party] argues that the trial court abused its discretion in considering two factors that he claims are not relevant to whether there is a likelihood that he will engage in future acts of domestic violence: (1) [the protected party's] fear of him and (2) the reasons he sought termination of the permanent protection order. We disagree."

  ↳ *Id.*

- "The court did make a finding that [the protected party] had a genuine fear that [the restrained party] would harm her, and the court mentioned that fear in its oral ruling. But the court merely was responding to [the restrained party's] own argument that fear was relevant. Under these circumstances, we hold that the trial court did not abuse its discretion in addressing [the protected party's] fear."

  ↳ *Id.* at 242.

- "[The restrained party] is correct in asserting that, for purposes of determining whether there has been a 'substantial change in circumstances,' the trial court must consider '*only* factors which address whether the respondent is likely to commit future acts of domestic violence against the petitioner.' RCW 26.50.130(3)(b) (emphasis added). Arguably, [the restrained party's] reasons for wanting to terminate the protection order are unrelated to his likelihood of committing future acts of domestic violence against [the protected party].

  However, [the restrained party] himself argued at both hearings that these considerations merited termination of the permanent protection order. 'Under the invited error doctrine, a party may not set up an error at trial and then complain of it on appeal. The doctrine applies when a party takes affirmative and voluntary action that induces the trial court to take an action that party later challenges on appeal.'

  Because [the restrained party] requested that the trial court consider these additional factors, he cannot now complain on appeal that the court took them into consideration. Under these circumstances, we hold that the trial court did not abuse its discretion in addressing [the restrained party's] reasons for seeking termination of the protection order."

  ↳ *Id*. at 242-43 (internal citations omitted).

Unpublished Decisions – Citing

Many appellate decisions in Washington cases concerning DVPOs are not published. GR 14.1 provides:

- "Unpublished opinions of the Court of Appeals have no precedential value and are not binding on any court. However, unpublished opinions of the Court of Appeals filed on or after March 1, 2013, may be cited as nonbinding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the court deems appropriate."

For guidance on citing unpublished cases from other jurisdictions, *see* GR 14.1(b) and (d):

- "Washington GR 14.1(b) permits a citation to an unpublished decision from other jurisdictions if the decision can be cited to as authority in that jurisdiction."
    - ↳ *Juarez v. Juarez*, 195 Wn. App. 880, 890, 382 P.3d 13 (2016) (permitting citation of an unpublished decision from Ohio because Ohio permits all appellate opinions issued after a certain date to be cited as legal authority and weighted as deemed appropriate without regard to whether the opinion was published).

Violations of DVPOs

- A respondent violates a DVPO if he or she has prohibited contact with a protected party, even if the protected party consents to the contact.
    - ↳ *State v. Dejarlais*, 136 Wn.2d 939, 969 P.2d 90 (1998).
- "[C]onsent is not a defense to the charge of violating a domestic violence order for protection."
    - ↳ *Id.* at 942.
- "[T]he Legislature's intent is clear throughout the statute, and allowing consent as a defense is not only inconsistent with, but would undermine, that intent."
    - ↳ *Id.* at 944.

About Legal Voice

Legal Voice is a progressive feminist organization using the power of the law to make change in the Northwest. We use that power structure to dismantle sexism and oppression, specifically advocating for our region's most marginalized communities: women of color, lesbians, transgender and gender-nonconforming people, immigrants, people with disabilities, low-income women, and others affected by gender oppression and injustice.

We believe that all women and LGBTQ people should be able to live their lives with dignity, safety, and autonomy. To this end, we work in the Northwest's courtrooms, legislatures, and communities, creating and enforcing strong, equitable laws and empowering people to know their rights.

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