

RCW 7.105.200 Hearings—Procedure. In hearings under this chapter, the following apply:

(1) Hearings under this chapter are special proceedings. The procedures established under this chapter for protection order hearings supersede inconsistent civil court rules. Courts should evaluate the needs and procedures best suited to individual hearings based on consideration of the totality of the circumstances, including disparities that may be apparent in the parties' resources and representation by counsel.

(2) (a) Courts shall prioritize hearings on petitions for ex parte temporary protection orders over less emergent proceedings.

(b) For extreme risk protection order hearings where a law enforcement agency is the petitioner, the court shall prioritize scheduling because of the importance of immediate temporary removal of firearms in situations of extreme risk and the goal of minimizing the time law enforcement must otherwise wait for a particular case to be called, which can hinder their other patrol and supervisory duties. Courts also may allow a law enforcement petitioner to participate remotely, or allow another representative from that law enforcement agency or the prosecutor's office to present the information to the court if personal presence of the petitioning officer is not required for testimonial purposes.

(3) If the respondent does not appear for the full hearing and there is no proof of timely and proper service on the respondent, the court shall reissue any temporary protection order previously issued and reset the hearing date. If a temporary protection order is reissued, the court shall reset the hearing date not later than 14 days from the reissue date. If a temporary protection order is reissued and the court permits service by mail or by publication, the court shall reset the hearing date not later than 30 days from the date of the order authorizing such service. These time frames may be extended for good cause.

(4) When considering any request to stay, continue, or delay a hearing under this chapter because of the pendency of a parallel criminal investigation or prosecution of the respondent, courts shall apply a rebuttable presumption against such delay and give due recognition to the purpose of this chapter to provide victims quick and effective relief. Courts must consider on the record the following factors:

(a) The extent to which a defendant's Fifth Amendment rights are or are not implicated, given the special nature of protection order proceedings, which burden a defendant's Fifth Amendment privilege substantially less than do other civil proceedings;

(b) Similarities between the civil and criminal cases;

(c) Status of the criminal case;

(d) The interests of the petitioners in proceeding expeditiously with litigation and the potential prejudice and risk to petitioners of a delay;

(e) The burden that any particular aspect of the proceeding may impose on respondents;

(f) The convenience of the court in the management of its cases and the efficient use of judicial resources;

(g) The interests of persons not parties to the civil litigation; and

(h) The interest of the public in the pending civil and criminal litigation.

(5) Hearings may be conducted upon the information provided in the sworn petition, live testimony of the parties should they choose to testify, and any additional sworn declarations. Live testimony of witnesses other than the parties may be requested by a party, but shall not be permitted unless the court finds that live testimony of witnesses other than the parties is necessary and material. If either party requests a continuance to allow for proper notice of witnesses or to afford a party time to seek counsel, the court may continue the hearing. In considering the request, the court should consider the rebuttable presumption against delay and the purpose of this chapter to provide victims quick and effective relief.

(6) If the court continues a hearing for any reason, the court shall reissue any temporary orders, including orders to surrender and prohibit weapons, issued with or without notice.

(7) Prehearing discovery under the civil court rules, including, but not limited to, depositions, requests for production, or requests for admission, is disfavored and only permitted if specifically authorized by the court for good cause shown upon written motion of a party filed six judicial days prior to the hearing and served prior to the hearing.

(8) The rules of evidence need not be applied, other than with respect to privileges, the requirements of the rape shield statute under RCW 9A.44.020, and evidence rules 412 and 413.

(9) (a) The prior sexual activity or the reputation of the petitioner is inadmissible except:

(i) As evidence concerning the past sexual conduct of the petitioner with the respondent when this evidence is offered by the respondent upon the issue of whether the petitioner consented to the sexual conduct alleged for the purpose of a protection order; or

(ii) When constitutionally required to be admitted.

(b) To determine admissibility, a written motion must be made six judicial days prior to the protection order hearing. The motion must include an offer of proof of the relevancy of the proposed evidence and reasonably specific information as to the date, time, and place of the past sexual conduct between the petitioner and the respondent. If the court finds that the offer of proof is relevant to the issue of the victim's consent, the court shall conduct a hearing in camera. The court may not admit evidence under this subsection unless it determines at the hearing that the evidence is relevant and the probative value of the evidence outweighs the danger of unfair prejudice. The evidence shall be admissible at the hearing to the extent an order made by the court specifies the evidence that may be admitted. If the court finds that the motion and related documents should be sealed pursuant to court rule and governing law, it may enter an order sealing the documents.

(10) When a petitioner has alleged incapacity to consent to sexual conduct or sexual penetration due to intoxicants, alcohol, or other condition, the court must determine on the record whether the petitioner had the capacity to consent.

(11) Courts shall not require parties to submit duplicate or working copies of pleadings or other materials filed with the court, unless the document or documents cannot be scanned or are illegible.

(12) Courts shall, if possible, have petitioners and respondents in protection order proceedings gather in separate locations and enter and depart the court room at staggered times. Where the option is available, for safety purposes, the court should arrange for petitioners to leave the court premises first and to have court

security escort petitioners to their vehicles or transportation.
[2022 c 268 s 12; 2021 c 215 s 24.]

Effective dates—2022 c 268: See note following RCW 7.105.010.

Effective date—2022 c 268; 2021 c 215: See note following RCW 7.105.900.