

# CIVIL PROTECTION ORDERS EX PARTE TEMPORARY REVIEW/HEARING

BENCH CARD

## PURPOSE:

To determine whether:

1. irreparable injury<sup>1</sup> could result from domestic violence<sup>2</sup> if a protection order is not issued immediately without prior notice to the respondent;<sup>3</sup> and/or
2. stalking,<sup>4</sup> telephone threats,<sup>5</sup> or threats based on a person's race, color, religion, ancestry, or national origin<sup>6</sup> has occurred in 90 days immediately preceding the filing of the petition and present harm could result if a protection order is not immediately issued without prior notice to the respondent.<sup>7</sup>

### *BEST PRACTICES TO ENHANCE SAFETY:*

- *Require certified interpreters when any party is limited English proficient*
- *Record all ex parte hearings and hold hearings in the courtroom*
- *Explain reason(s) for not granting immediate relief and/or not scheduling a full hearing*
- *Consider allowing petitioner to amend or supplement petition to provide additional facts in writing*
- *Identify all criminal charges or pending civil cases and address any conflicts in orders*
- *Allow the petitioner to have someone accompany them for support*

## WHEN:

I.C. § 39-6308: The court may grant an ex parte temporary protection order based upon the petition **or otherwise shall hold** a hearing which may be ex parte on the day a petition is filed or on the following judicial day<sup>8</sup> to determine whether the court should grant an ex parte temporary protection order, pending a full hearing.<sup>9</sup>

I.C. § 18-7908: The court may grant an ex parte temporary protection order based upon the petition **or may hold** an ex parte hearing on the day a petition is filed or on the following judicial day to determine whether the court should grant an ex parte temporary protection order pending a full hearing, **dismiss the verified petition, or deny the ex parte temporary protection order and set the matter for a full hearing.**<sup>10</sup>

**Note:** *Bolded text in Bench Cards are to show differences in Statutes.*

## WHERE:

The petition shall be filed in the county of the respondent's residence, petitioner's residence, or where the petitioner is temporarily residing.<sup>11</sup>

EX PARTE

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### WHO:

A person may seek relief from domestic violence<sup>12</sup> alleging that the person or a family or household member, whether an adult or child, is a victim of domestic violence.<sup>13</sup> The right to petition shall not be affected by having left the residence to avoid abuse.<sup>14</sup>

A person may seek relief from stalking,<sup>15</sup> telephone threats,<sup>16</sup> or threats based on a person's race, color, religion, ancestry, or national origin.<sup>17</sup>

A custodial or noncustodial parent or guardian may file a petition on behalf of a minor child or ward.<sup>18</sup>

*Who may be present at the hearing?*

- *Petitioner and respondent*
- *Attorney(s) for petitioner and/or respondent*
- *Advocate or support person for petitioner*
- *The court may exclude all persons from the courtroom except officers of the court, the parties, their witnesses and counsel, provided that in any cause the court may exclude witnesses as provided in the Idaho Rules of Evidence<sup>19</sup>*

### WHAT TO CONSIDER:

Who is the protected person(s)? Petitioner, minor children, family or household member, or ward?

What is the relationship between the protected person(s) and the respondent?

Are there any current orders or pending cases involving the parties or their children?

- Criminal no contact orders or civil protection orders
- Custody proceedings
- Divorce proceedings
- Other custody orders
- Child protection, guardianship, or adoption proceedings

What is the relief requested (e.g., stay-away order, move-out order, child custody, other)?

### EVIDENCE:

The court may grant a temporary protection order based upon the petition or testimony given.

I.C. § 18-7907: The court must rely on evidence based on specific facts that a person was the victim of conduct **within the 90 days immediately preceding the filing of the petition** and present harm could result if a protection order is not immediately issued without prior notice to the respondent. Such evidence occurring prior to such 90 day period may be admissible to show a course or pattern of conduct.<sup>20</sup>

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### FINDINGS:

The court may issue a protection order without notice to the respondent, not to exceed 14 days, upon a showing:<sup>21</sup>

1. if a protection order is not issued immediately that irreparable injury could result from domestic violence,<sup>22</sup> and/or
2. the respondent intentionally engaged in stalking,<sup>23</sup> telephone threats,<sup>24</sup> or threats based on a person's race, color, religion, ancestry, or national origin<sup>25</sup> and present harm could result if a protection order is not immediately issued.

Relief shall not be denied because:

1. petitioner used reasonable force in self-defense,<sup>26</sup> and/or
2. petitioner or respondent was a minor at the time of incident.<sup>27</sup>

### ORDER:

The court may grant such relief as the court deems proper, including:<sup>28</sup>

- ✓ Personal Conduct Order (including exceptions for contact)
- ✓ Stay-Away Order (including distance and location restrictions)
- ✓ **Move-Out Order (including law enforcement assistance)**
- ✓ **Temporary Child Custody**
- ✓ Other relief as the court deems necessary/proper

**Note:** *Bolded relief only addressed in I.C. § 39-6308.*

*Consider RISK INDICATORS when determining exceptions and child visitation/exchange*

EX PARTE

Ex parte temporary protection order shall be effective for a fixed period not to exceed 14 days.<sup>29</sup>

A full hearing shall be set no later than 14 days from issuance of the ex parte protection order.<sup>30</sup>

An ex parte order may be reissued for period(s) not to exceed 14 days.<sup>31</sup> An ex parte protection order may be reissued and the full hearing rescheduled to allow for service.

Use Idaho Supreme Court approved forms and orders.<sup>32</sup>

If child physical or sexual abuse is alleged, the court shall order an investigative report through the Department of Health and Welfare.<sup>33</sup> It can be requested that this report be submitted to the court in time for the full hearing to allow it to be reviewed by the judge and parties.

If the ex parte protection order substantially affects the respondent's rights to enter the domicile or the respondent's right to custody or visitation, the respondent may motion for an order shortening time.<sup>34</sup>

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### SERVICE:

The ex parte protection order along with a copy of the petition shall be personally served upon the respondent.<sup>35</sup>

The clerk of the court shall forward a copy of the ex parte protection order, petition, and law enforcement service information sheet to the sheriff's office in the county in which the order was originally issued, or as specified in the order, for immediate entry into record systems and to facilitate service in the jurisdiction in which the respondent resides.<sup>36</sup>

### FULL FAITH AND CREDIT:

All civil protection orders issued in Idaho meet "full faith and credit" requirements of the Violence Against Women Act (VAWA), 18 U.S.C. § 2265, upon service of the respondent and are entitled to enforcement in each jurisdiction throughout the 50 states of the United States, the District of Columbia, all tribal lands, and all U.S. territories, commonwealths, and possessions.

### ENDNOTES

<sup>1</sup> I.C. § 18-7907(11)(b), § 39-6308(3).

<sup>2</sup> I.C. § 39-6303(1).

<sup>3</sup> I.C. § 39-6308(1).

<sup>4</sup> As described in I.C. § 18-7905, § 18-7906.

<sup>5</sup> I.C. § 18-7907(1)(b).

<sup>6</sup> I.C. § 18-7907(1)(c).

<sup>7</sup> I.C. § 18-7908(1).

<sup>8</sup> I.C. § 39-6303.

<sup>9</sup> I.C. § 39-6308(1) emphasis added.

<sup>10</sup> I.C. § 18-7908(1) emphasis added.

<sup>11</sup> I.C. § 18-7907(9), § 39-6304(6).

<sup>12</sup> I.C. § 39-6303(1).

<sup>13</sup> I.C. § 39-6304(2).

<sup>14</sup> I.C. § 39-6304(3).

<sup>15</sup> As described in I.C. § 18-7905, § 18-7906.

<sup>16</sup> I.C. § 18-7907(1)(b).

<sup>17</sup> I.C. § 18-7907(1)(c).

<sup>18</sup> I.C. § 18-7907(2), § 39-6304(2).

<sup>19</sup> IRFLP 115; IRE 615.

<sup>20</sup> I.C. § 18-7907(2) emphasis added.

<sup>21</sup> I.C. § 18-7908(1)(3), § 39-6308(1)(5) emphasis added.

<sup>22</sup> I.C. § 39-6303(1).

<sup>23</sup> As described in I.C. § 18-7905, § 18-7906.

<sup>24</sup> I.C. § 18-7907(1)(b).

<sup>25</sup> I.C. § 18-7907(1)(c).

<sup>26</sup> I.C. § 39-6306(4).

<sup>27</sup> I.C. § 39-6306(4).

<sup>28</sup> I.C. § 18-7907(4), § 39-6308(1).

<sup>29</sup> I.C. § 18-7908(3), § 39-6308(5).

<sup>30</sup> I.C. § 18-7908(3), § 39-6308(5).

<sup>31</sup> I.C. § 18-7908(3), § 39-6308(5).

<sup>32</sup> I.C. § 39-6311.

<sup>33</sup> I.C. § 32-717C, § 16-1605.

<sup>34</sup> I.C. § 39-6308(5).

<sup>35</sup> I.C. § 39-6310(1) emphasis added.

<sup>36</sup> I.C. § 39-6310, § 39-6311.