

# CIVIL PROTECTION ORDERS FULL (14-DAY) HEARING

BENCH CARD

## PURPOSE:

To determine whether to issue a protection order, for a period not to exceed 1 year, upon a showing:<sup>1</sup>

1. of immediate and present danger<sup>2</sup> of domestic violence<sup>3</sup> to the petitioner; and/or
2. that a person was the victim of 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> within the 90 days immediately preceding the filing of the petition and that such conduct is likely to occur in the future.

### *BEST PRACTICES TO ENHANCE SAFETY:*

- *Provide enhanced courthouse and courtroom security for protection order cases*
- *Schedule court and calendar cases for maximum effectiveness and efficiency*
- *Allow the petitioner to have someone accompany them for support*
- *Require parties sit on opposite sides of the courtroom*
- *Staggered departures- respondent remains in courthouse 10-15 minutes after petitioner leaves*
- *Strategic placement of court officers/bailiff/courtroom security*
- *Use standard courtroom announcements to set tone and rules*
- *Advise parties of their rights*
- *Identify all criminal charges or pending civil cases and address any conflicts in orders*

## WHEN:

Upon filing of a petition, the court shall hold a hearing, within 14 days, to determine whether the relief sought shall be granted.<sup>7</sup>

If either party is represented by counsel at a hearing, the court shall permit a continuance, if requested, so that counsel may be obtained by the other party.<sup>8</sup>

If the court finds that it is necessary for both parties to be represented by counsel, the court shall enter appropriate orders to ensure that counsel is retained.<sup>9</sup>

## 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>10</sup>

Motions seeking an order shortening the time period must be served upon the petitioner at least 2 days prior to the hearing on the motion.<sup>11</sup>

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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> occurring in the 90 days immediately preceding the filing of the petition.

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?*

- *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>*
- *Petitioner and respondent*
- *Attorney(s) for petitioner and/or respondent*
- *Advocate or support person for petitioner*

## 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:

Explain ground rules for presentation of evidence (no interruptions, time limits, prevent respondent from directly addressing petitioner in court, etc.).

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 that such conduct is likely to occur in the future. Such evidence occurring prior to such 90 day period may be admissible to show a course or pattern of conduct.<sup>20</sup>

The evidentiary standard is preponderance of evidence.<sup>21</sup>

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

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## FINDINGS:

The court may issue a protection order, not to exceed 1 year, upon a showing:<sup>22</sup>

1. of immediate and present danger<sup>23</sup> of domestic violence<sup>24</sup> to the petitioner; and/or
2. that a person was the victim of stalking,<sup>25</sup> telephone threats,<sup>26</sup> or threats based on a person's race, color, religion, ancestry, or national origin<sup>27</sup> within the 90 days immediately preceding the petition and that such conduct is likely to occur in the future.

Relief shall not be denied because:

1. petitioner used reasonable force in self-defense;<sup>28</sup> and/or
2. petitioner or respondent was a minor at the time of incident.<sup>29</sup>

If a protection order is not granted at the full hearing, the court shall issue a dismissal order for the ex parte order or if an order is terminated before its expiration date, the court shall issue a dismissal order.<sup>30</sup>

The court may realign the designation of the parties as "petitioner" and "respondent" where the court finds that the original petitioner is the abuser and the original respondent is the victim of domestic violence.<sup>31</sup>

## ORDER:

The court may grant such relief as the court deems proper, including:<sup>32</sup>

- ✓ Personal Conduct Order (including exception for contact)
- ✓ Stay-Away Order (including distance and location restrictions)
- ✓ **Move-Out Order (including law enforcement assistance)**
- ✓ **Child Custody (including visitation, exchange, and communication)**
- ✓ **Respondent to participate in treatment or counseling services**
- ✓ **Respondent be required to reimburse the petitioner for costs incurred in bringing the action, including attorney's fees**
- ✓ Other relief as the court deems necessary/proper

*Consider RISK INDICATORS when determining exceptions, child visitation/exchange, and length of Order*

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**Note:** *Bolded relief only addressed in I.C. § 39-6306.*

An ex parte order may be reissued and the full hearing rescheduled to allow for service.

Use Idaho Supreme Court approved forms and orders.<sup>33</sup>

The order entered may require the petitioner or respondent, or both, to pay for costs of counsel.<sup>34</sup>

### *BEST PRACTICES TO ENHANCE SAFETY:*

- *Instruct both parties about specifics of the order and that the petitioner cannot give permission to the respondent to violate the order*
- *Couples therapy and/or joint parenting classes should NOT be ordered*
- *Do NOT enter a mutual protection order. Each party must file their own petition/case*

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## Child Custody

Where requested by the petitioner, judges may include temporary custody and visitation provisions.

Temporary custody of the minor children of the petitioner or of the parties may be awarded to the petitioner or respondent if:<sup>35</sup>

1. exercise of such jurisdiction is consistent with the provisions of I.C. § 32-11-204; and
2. consistent with prior custody orders entered by a court of competent jurisdiction unless grounds exist pursuant to I.C. § 32-717.

If child physical or sexual abuse is alleged, the court shall order an investigative report through the Department of Health and Welfare.<sup>36</sup>

### *BEST PRACTICE TO ENHANCE SAFETY:*

- *If custody/visitation is not ordered, the order should address specific forms of communication allowed regarding the children (e.g., text, email, etc.)*
- *If visitation is ordered, explicitly articulate the day, time, and location for visitation or exchange. Do not order visitation as “reasonable” or “mutually agreeable.” Consider supervised access/exchange or a neutral drop off/pick up location*

## **SERVICE:**

A protection order shall be personally served upon the respondent,<sup>37</sup> except as follows:

1. If an order entered by the court recites that the respondent appeared in person before the court and receives a copy of the order, the necessity for further service is waived and proof of service of that order is not necessary;<sup>38</sup> or
2. If a party has appeared in person before the court and has waived personal service, the clerk of the court shall complete service of any notice of hearing, orders, or modifications by certified mail to the party's address.<sup>39</sup>

**Note:** *Service upon an attorney of record is not a substitute for personal service or certified mail.*

Following the entry of a protective order, the clerk of the court shall forward a copy of the protection order 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, if not previously served.<sup>40</sup>

## **VIOLATION OF THE ORDER:**

Instruct parties that a violation of the protection order is a criminal offense.

A violation of the provisions of a protection order shall be a misdemeanor punishable by up to one year in jail and a fine not to exceed \$5,000. A peace officer may arrest without a warrant.<sup>41</sup>

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## 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.

## FEDERAL FIREARMS PROHIBITIONS:

Federal firearms prohibitions may apply to protection orders issued under I.C. § 39-6306 or I.C. § 18-7907.

It is unlawful for the respondent to purchase or possess a firearm or ammunition pursuant to federal law under 18 U.S.C. § 922(g)(8), if:

1. The order was issued after the respondent had notice and opportunity to participate; and
2. The relationship between the parties is spouse, former spouse, child in common, intimate partner, or child, as defined by federal law.

**Note:** *The nature of the relationship between the protected person(s) and the respondent determines the federal firearms restriction (check all that apply to the relationship on the order).*

**Note:** *Judges cannot make exceptions to the federal firearms prohibition (e.g., allowing firearms during hunting season, is not a permitted exception).*

## ENDNOTES

<sup>1</sup> I.C. § 18-7907(4), § 39-6306(1) emphasis added.

<sup>2</sup> I.C. § 39-6306(2).

<sup>3</sup> I.C. § 39-6303(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. § 18-7907(3), § 39-6306(1).

<sup>8</sup> I.C. § 18-7907(3), § 39-6306(1) emphasis added.

<sup>9</sup> I.C. § 39-6306(1).

<sup>10</sup> I.C. § 18-7907(9), § 39-6304(6).

<sup>11</sup> I.C. § 18-7908(3), § 39-6308(5).

<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 111; IRE 615.

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

<sup>21</sup> I.C. § 18-7907(4).

<sup>22</sup> I.C. § 18-7907(4), § 39-6306(1).

<sup>23</sup> I.C. § 39-6306(2).

<sup>24</sup> I.C. § 39-6303(1).

<sup>25</sup> As described in I.C. § 18-7905, § 18-7906.

<sup>26</sup> I.C. § 18-7907(1)(b).

<sup>27</sup> I.C. § 18-7907(1)(c).

<sup>28</sup> I.C. § 39-6306(4).

<sup>29</sup> I.C. § 39-6306(4).

<sup>30</sup> I.C. § 39-6313.

<sup>31</sup> I.C. § 39-6306(6).

<sup>32</sup> I.C. § 18-7907(4), § 39-6306(1).

<sup>33</sup> I.C. § 39-6311.

<sup>34</sup> I.C. § 18-7907(3), § 39-6306(1).

<sup>35</sup> I.C. § 39-6306(1)(a).

<sup>36</sup> I.C. § 32-717C, § 16-1605.

<sup>37</sup> I.C. § 39-6310(1)(2) emphasis added.

<sup>38</sup> I.C. § 39-6310(6).

<sup>39</sup> I.C. § 39-6310(7) emphasis added.

<sup>40</sup> I.C. § 39-6310, § 39-6311.

<sup>41</sup> I.C. § 18-7907(8), § 39-6312.