

# CLERK OF THE DISTRICT COURT MANUAL

## 10.0 DOMESTIC VIOLENCE

Revised August 2007

### 10.1 PURPOSE

The purpose of this act is to address domestic violence as a serious crime against society and to assure the victims of domestic violence the protection from abuse which the law and those who enforce the law can provide. (I.C. § 39-6302)

### 10.2 INTENT

It is the intent of the legislature to expand the ability of the courts to assist victims by providing a legal means for victims of domestic violence to seek protection orders to prevent such further incidents of abuse. (I.C. § 39-6302)

### 10.3 DEFINITIONS

**Protection Order:** Any order issued for the purpose of preventing violent or threatening acts or acts of harassment against, or contact or communication with, or physical proximity to, another person, where the order was issued: (a) Pursuant to title 39, chapter 63; (b) In another jurisdiction pursuant to a provision similar to section 39-6306, Idaho Code; or (c) In any criminal or civil action, as a temporary or final order (other than a support or child custody order), and where the order was issued in a response to a criminal complaint, petition or motion filed by or on behalf of a person seeking protection, and issued after giving notice and an opportunity to respond to the person being restrained. (I.C. § 39-6303(8)).

**Respondent:** The individual against whom enforcement of a protection order is sought (I.C. § 39-6303(9)).

**Domestic Violence:** Physical injury, sexual abuse or forced imprisonment or threat thereof of a family or household member, or of a minor child by a person with whom the minor child has had or is having a dating relationship, or of an adult by a person with whom the adult has had or is having a dating relationship. (I.C. § 39-6303(1)).

**Dating Relationship:** A social relationship of a romantic nature. Factors that the court may consider in making this determination include: the nature of the relationship; the length of time the relationship has existed; the frequency of interaction between the parties; and the time since termination of the relationship. (I.C. § 39-6303(2)).

**Family Member:** Spouses, former spouses, and persons related by blood, adoption or marriage. (I.C. § 39-6303(3)).

**Family Dwelling:** Any premises in which the petitioner resides. (I.C. § 39-6303(4)).

**Foreign Protection Order:** A protection order issued by a tribunal of another state (I.C. § 36-6303(5)).

**Household Member:** Persons who reside or have resided together, and persons who have a child in common regardless of whether they have been married or have lived together at any time. (I.C. § 39-6303(6)).

**Judicial Day:** Any day upon which court business may be enacted as provided in I.C. §1-1606 and I.C. § 1-1607, Idaho Code. (I.C. § 39-6303(7)).

## **10.4 PROCESSING**

**A. Filing for an Order of Protection.** A person may seek relief from domestic violence by filing a petition based upon a sworn affidavit with the magistrate division alleging that the person or a family household member, whether an adult or a child, is the victim of domestic violence. I.C. § 39-6304(2). No filing fee, service fee, hearing fee or bond shall be charged for proceedings seeking only the relief provided under this chapter. I.C. § 39-6305.

**B. Initial Order – Ex Parte Temporary Order.** Based upon the application, or after a hearing within one day, the court may enter a temporary protection order. I.C. § 39-6308(1). The temporary order may not exceed 14 days and a full hearing on the petition shall be set within that period. I.C. §§ 39-6306(1), 39-6308(5). The time and place for the hearing is stated in the order.

**C. Full Hearing and Final Orders.** At the full hearing, if the court finds that there is an immediate and present danger of domestic violence, a protection order may be entered for up to one year. I.C. § 39-6306(1). Such an order may be continued for an appropriate time period or be made permanent upon motion and good cause shown. This may be done without a hearing if no timely objection is made. The order may not be terminated or modified unless there is a stipulation to do so or a hearing is held. I.C. §§ 39-6306(5), 39-6313.

**D. Service of Orders.** All orders, temporary, one year, or permanent, shall be personally served upon the respondent. I.C. § 39-6310(1). Service of the order shall be by a peace officer of the jurisdiction in which the respondent resides, unless the petitioner elects to arrange for service through a private person. I.C. § 39-6310(2). If service is through a peace officer, the clerk shall forward a copy of the order and petition to the appropriate

law enforcement agency (including out of state) specified in the order before the next judicial day. I.C. § 39-6310(3). Regardless of service, the clerk shall forward a copy of the order, before the next judicial day, to the appropriate law enforcement agency specified in the order. I.C. § 39-6311(2)(a).

**E. Confidentiality.** All files, except the orders, are confidential and exempt from disclosure. Any willful or intentional disclosure of the contents of such files may be treated as a contempt of court. I.A.R. 32(g).

**F. Violations of Orders.** Violation of a protection order is a misdemeanor punishable by up to 1 year in jail and a fine of up to \$5,000.00.

## **10.5 FEES**

No filing fee, service fee, hearing fee or bond shall be charged for proceedings seeking only the relief provided under this chapter. (I.C. § 39-6305). The filing code for this is 9CDV.

### Clerical Duties:

1. Supply the appropriate forms and/or packet to the petitioner for completion, which should include ([http://www.courtselfhelp.idaho.gov/forms\\_new.asp?Cat\\_ID=36](http://www.courtselfhelp.idaho.gov/forms_new.asp?Cat_ID=36)):
  - Law Enforcement (ILETS) Transmittal Form
  - Family Law Case Information Sheet
  - Sworn Application for Protection Order.

**Note:** The petition should not be filed until all the forms are filled out.
2. File stamp the petition and open the case in ISTARs.
3. Use the information on the Family Law Case Information Sheet to complete the party master screen in ISTARs for the petitioner and respondent. File stamp the Family Law Case Information Sheet. Additional information may also be found on the Law Enforcement Transmittal Form (e.g. scars, tattoos, etc.) which would be listed on the party master screen as “body marks”. The Family Law Case Information Sheet is confidential and must be kept in a sealed envelope.
4. Submit paperwork to the judge with a 14-day temporary protection order for the judge to review and sign. The court, at its discretion, may interview the petitioner either on or off the record. If this is done, the hearing would not be open to the public.

5. If upon examination of the petition and other documentation the judge determines that the criteria has been met to issue the temporary order, the clerk sets a hearing date within 14 days (the temporary order expires at 11:59 pm on the 14th day). Any requests for a continuance shall be submitted to the judge.
6. After issuance of the temporary order, the clerk will prepare certified copies of the petition and the protection order which should be distributed as follows:
  - Petitioner: Certified copy and specified number of additional certified copies of the order, if requested.
  - Law Enforcement:
    - the original law enforcement transmittal form (no copy of the form is to be retained in the court's file);
    - a copy of the petition and the order for service upon the respondent;
    - a certified copy of the order;
    - any additional certified copies as per local practice.
7. At the 14-day hearing, upon a showing that there is an immediate and present danger of domestic violence to the petitioner and other parties as identified in the petition, the court may issue a protective order for a specified length of time or if appropriate may enter a permanent protection order. After the order is issued, enter the appropriate civil disposition, close the case in ISTARs, and distribute copies as follows:
  - Petitioner: Certified copy and specified number of additional certified copies of the order, if requested.
  - Law Enforcement:
    - a certified copy of the order;
    - a copy of the order for service upon the respondent if not previously served in court.

The clerk will prepare copies of all subsequent orders and distribute as noted above.

8. Upon receipt of a motion to renew the protection order, an additional order may be granted without a hearing, unless a timely objection is made by the party against whom the order was entered.
9. If the judge denies the petition, enter the appropriate civil disposition and close the case in ISTARs. (No copies of the documents go out to anyone, and the case file is sealed.)

Note: In May of 2006 the state of Idaho joined a national effort to standardize the first page of a protection order. Hereafter referred to as the “Recognizable First Page” or RFP. This page is designed to improve recognition and enforcement of orders of protection within and between states and tribes by including common elements and format. This format has been adopted by several other states and efforts are underway to ask Indian Tribes within the state of Idaho to adopt the same format.

The intent of this change was to create a document which on its face is exactly the same every time regardless of which Court or state issued it, which contains the necessary information for Law Enforcement to use in identifying the petitioner, respondent, other parties, and other information essential to enforce the order. All protection orders issued in Idaho are currently using this format; the left hand upper caption may vary slightly depending on the title of the order, i.e. Temporary Ex Parte Order, vs. Protection Order etc.

This form has been inserted in ISTARs and will capture nearly all of the data, as entered by the clerk using the Petition, Family Law Information Sheet, and Law Enforcement Transmittal form information.

## **10.6 FOREIGN PROTECTION ORDERS**

Any individual may register a foreign protection order in this state by presenting a certified copy of the order and an affidavit stating the order is currently in effect. I.C. § 39-6306A(5). A valid out-of-state protection order, referred to as a "foreign" protection order, shall be recognized by the courts of this state and shall be enforced as if issued in this state I.C. § 39-6306A.

### Clerical Duties:

1. Receive a copy of the foreign protection order and supporting affidavit. The order must be accompanied by a Family Law Case Information Sheet and a Law Enforcement Transmittal Form. File stamp the Family Law Case Information Sheet.
2. File stamp the foreign order and supporting affidavit.
3. Open (and immediately close) a case in ISTARs as a foreign judgment.
4. The original certified copy of the petition and foreign order provided by petitioner, as certified by the other state, should be placed in the case file. Additional certified copies should be distributed as follows:
  - Petitioner: Certified copy and specified number of additional certified

copies of the order, if requested.

- Law Enforcement:
  - the original law enforcement transmittal form (no copy of the form is to be retained in the court's file);
  - a copy of the petition and the order for service upon the respondent;
  - a certified copy of the order;
  - any additional certified copies as per local practice.
- Case file

**Note:** No fees are required to accept a foreign protection order.

Note: All orders must be forwarded to the appropriate law enforcement agency before the next judicial day.