



March 25, 2020

MEMORANDUM

TO: King County Law Enforcement Agencies

FROM: David Martin, KCPAO DV Unit Chair
Erin Overby, KCSO Legal Advisor
Rebecca Boatright, SPD Legal Advisor

SUBJECT: **GUIDANCE FOR LAW ENFORCEMENT SERVICE OF CIVIL PROTECTION ORDERS AND CRIMINAL NO CONTACT ORDERS UNDER COVID-19**

The Washington State Supreme Court has issued an order related to COVID-19:

- In section 3, the Court deemed civil protection and restraining orders to be emergency matters that must be heard by means that do not require in-person attendance, if possible.
- In section 6, the Court allowed criminal ex parte no contact orders to be issued in filed sex, domestic violence, stalking, and harassment cases pursuant to RCW 10.99.040, RCW 10.99.045, RCW 10.14.040, RCW 7.90.150, RCW 9A.46.085, and/or RCW 9A.46.040. The Court permitted such orders to be served upon the defendant by mail. **HOWEVER, this provision does not relieve the State of proving that the defendant knew of the existence of such an ex parte order in any prosecution for a violation of the order.**

A no contact or protection order must be entered and served by law enforcement. Given the Supreme Court's COVID 19 order, can law enforcement choose not to serve a Protection Order altogether?

No. The Domestic Violence Prevention Act requires that a protection order be personally served by the "sheriff of the county or the peace officers of the municipality in which the respondent resides...unless the petitioner elects to have the respondent served by a private party. If the order includes a requirement under [RCW 9.41.800](#) for the immediate surrender of all firearms, dangerous weapons, and any concealed pistol license, the order must be served by a law enforcement officer." RCW 26.50.090(2). Moreover, given the serious issue of delays in arraignments in filed domestic violence, sexual assault, and stalking cases due to the current pandemic's effect on the criminal justice process, combined with widespread reported increase in DV due to home confinement, protection order service is now more important than ever.

May LE engage in alternatives to personal service during the pandemic?

Yes and no. If weapons are ordered to be surrendered under RCW 9.41.800, then in-person service is required. If an order to vacate accompanies the protection order, then in-person service is required. However, if no weapons surrender or order to vacate is included, then alternative service is recommended, and expressly allowed under the Supreme Court's recent order.

Is service by publication or mail effective/sufficient for criminal prosecution?

Rarely. [RCW 26.50.115\(1\)](#) provides that a respondent cannot be prosecuted unless he or she knows of the order. [RCW 26.50.115\(2\)](#) requires the investigating officer to ascertain whether the respondent knew of the existence of the order, and if not, to make reasonable efforts to serve the order and then enforce prospective compliance. Service, in this context, is the way we prove knowledge. Service by publication and by mail may be insufficient to prove knowledge in many instances, because the restrained party's discovery of the order's existence is, typically, unwitnessed in such circumstances.

What are effective ways to prove knowledge?

If there are no firearms or an order to vacate:

- **Phone:** Call the respondent and document call on Return of Service. Strongly consider recording the conversation. (Consent is desirable but not required. Washington law does not prohibit the recording of telephonic conversations between a civilian and a law enforcement officer conducting her or his official duties, so long as the civilian knows that he is speaking to a law enforcement officer.) Indicate what was relayed to the respondent. Information to be relayed should include prohibitions and date, time and location of hearing. Best practice: get an email address and/or text number from the respondent and follow up by emailing and/or texting documents (see below).
- **Text:** If you have a mobile number for the respondent that accepts texts, text the documents to the respondent. Screenshot the text message exchange and include with the Return of Service
- **Email:** If an e-mail address exists for the restrained party, send them the order by email. Remember, turn on read receipt if by email, and make sure to retain the email sent and the read receipt. The email should be kept electronically, and not just printed out and stored in the case file. The metadata associated with the electronic original may prove important.
- **Mail:** If you have no other option than to mail the order, include mailing information on the Return of Service. Consider using certified mail and including return receipt.