

Procedures of Idaho Civil Protection Orders

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Overview

Background – Idaho Legal Aid Services, Inc.

Why are Civil Protection Orders available?

Reasons / Routes for a Civil Protection Order.

The Process:

- Initial Filings.

- Ex Parte.

- Extended Hearing.

Protection (potentially) Provided.

Additional Procedural Considerations.

Background - Idaho Legal Aid Services, Inc.

A nonprofit statewide organization dedicated to providing equal access to justice for low-income people through quality advocacy and education.

Seven Offices across the State of Idaho.

Practice Areas Include:

Housing;

Agricultural and Migrant Farmworkers;

Seniors / Elder Law;

Indigenous / Native American;

Family Law – Domestic Violence, Sexual Assault, and Stalking.

Why does Idaho have Civil Protection Orders?

Statistics on Domestic Violence (National)

1 in 3 women will experience some form of Domestic Violence by an intimate partner.

1 in 7 men will experience some form of Domestic Violence by an intimate partner. (*National Coalition on Domestic Violence, 2010*).

Note(s): Reported statistics. Also, abuse tactics / reporting varies based on race, geographic location, disability, gender identity, and sexual orientation.

For more: See Duluth Model's Power and Control Wheel; Domestic Abuse Intervention Programs.

Macro Level:

Past few decades – Emerged as accessible and effective response to domestic violence and abuse through judicial intervention.

Idaho Specific:

The intention of the Idaho Legislature was to “expand the ability of Courts by providing legal means for survivors of domestic violence to seek protections orders to prevent further instances of abuse.” I.C. 39-6302.

“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.

How can a Civil Protection Order provide intervention?

A civil protection order is a civil provision with criminal penalties. The order is a document issued by a civil court that orders the person who is abusing or stalking an individual to stop doing so. If the wrongdoer violates the civil protection order, he/she may be criminally punished by the court.

Routes / Reasons for a Civil Protection Order

Four proscribed reasons:

- (1) Stalking, as defined by I.C. 18-7907(1)(a); I.C. 18-7905; I.C. 18-7906.
- (2) Telephone Threats, as defined by I.C. 18-7907(1)(b);
- (3) Threats based on Race, Color, Religion, Ancestry, or National Origin, as defined by I.C. 18-7907(1)(c); and
- (3) Domestic Violence, as defined by I.C. 39-6303;

<div>Stalking</div> <div>I.C. 18-7907(1)(a) & 18-7905-6.</div> <div></div>	<div>Telephone Threats</div> <div>I.C. 18-7907(1)(b)</div> <div></div>	<div>Threats based on Race, Color, Religion, Ancestry, or National Origin</div> <div>I.C. 18-7907(1)(c)</div> <div></div>
<div>Within the past 90 days, the abuser must have:</div> <div> <div>(1) Repeatedly contacted the survivor, a family member, or a household member without permission; and</div> <div>(2) The contact between the abuser and the survivor must alarm, annoy, harass, or scare the victim, causing emotional distress, fear of injury or fear of death.</div> </div> <div>Note: Survivor request to terminate contact.</div>	<div>Within the last 90 days, the abuser telephoned the survivor with the intent to:</div> <div> <div>(1) Terrify, threaten, or intimidate such other person; and <div> <div>(a) Addresses to such other person any threat to inflict injury or physical harm to the person addressed; or</div> <div>(b) any member of his family and engages in such conduct.</div> </div> </div> <div>(2) With any device that provides transmission of messages, signals, facsimiles, video images, or other communication by means of telephone, telegraph, cable, wire, or the projection of energy without physical connection between persons who are physically separated from each other.</div> </div>	<div>Within the last 90 days, the abuser:</div> <div> <div>(1) Intimidated, threatened, harassed, or causes physical injury to: <div> <div>(a)the victim or</div> <div>(b) the victim’s property.</div> </div> </div> <div>(2) The threats and/or harassment must be based upon the victim’s race, color, religion, ancestry, or national origin.</div> </div>

Domestic Violence I.C. 39-6303(1)

Either:

- (1) The survivor a family member, or a child under 18 years of age;
- (2) Experienced actual physical injury, sexual abuse, or forced imprisonment or a threat thereof; and
- (3) The abuser must be 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.

“Dating Relationship:”

Defined as, “social relationship or a romantic nature.”

Factors include:

- Nature of relationship;
- Duration of relationship;
- Frequency and interaction b/t parties;
- Time of termination of relationship. I.C. 39-6303(2).

Examples of Relationships that Satisfy “Dating Relationship:”

- Spouse or former spouse;
- Parties live together or previously lived together;
- Parties share a child in common;
- Parent / Child relationship;
- Relation through blood, adoption, or marriage;
- Currently dating or previously dated. I.C. 39-6304.

Civil Protection Order Process

To Initiate:

(1) Must File: Verified Petition, Family Law Case Information Sheet, and Law Enforcement Information Sheet.

Steps:

(2) Ex Parte Hearing (within a matter of days).

(3) Temporary Civil Protection Order (two weeks).

Law Enforcement will serve.

(4) Full / Extended Hearing.

Initial Filings

1. Family Law Case Information Sheet.

Contact information of parties; whether parties need translation; and involvement of other cases.
Kept confidential by Court.

2. Sworn / Verified Petition for a Protection Order.

Information about parties and their relationship; information about minor children; residence(s); other crimes; purpose of filing (with brief description); previous threats or instances of violence; protected address(es); move out order; temporary physical child custody.

Can add / attach exhibits.

3. Law Enforcement Information Sheet.

Contact / descriptive information so Law Enforcement may serve Respondent with the Temporary Order, should it be granted.

All initial documents are Court Assistance Office forms, which can be found here:

<https://courtselphelp.idaho.gov/Forms/Protection>

No filing fee (Idaho Civil Filing Category H(2); I.C. 39-6305.

Ex Parte Hearing, Service, & Full Hearing.

- Ex parte hearing:

Should occur day of filing or on the next judicial day. I.C. 39-6308(1).

Court may order: removing Respondent from home; refraining Respondent from seeing minor children; other relief the Court deems just. I.C. 39-6308(1)(b), (c), (d), (f).

Cannot exceed fourteen (14) days; but can be reissued. I.C. 39-6308(5).

Full hearing will be set.

- If granted, law enforcement will serve the Respondent.

Just as a note, service often causes violent reactions from Respondents; often important to do some safety planning with the Petitioner / survivor.

- Full Hearing.

Approx. two (2) weeks later, a full hearing will occur.

Opportunity for both parties to present a case.

Civil Protection order can be granted up to one (1) year. I.C. 39-6306(1); I.C. 39-6306(5).

If Respondent is present, they can be served a copy in the courthouse; otherwise Law Enforcement will serve Respondent.

What can a Civil Protection Order Provide?

- Stay Away Order – proscribed amount of feet Respondent must remain from Survivor (and potentially minor children). Includes protected address(es).
- Move Out Order – may require Respondent to move out from a shared residence. Can include appropriate language to obtain a civil standby to collect items from home.
- Temporary Physical Custody.
- Potential counseling or treatment for Respondent, including a Domestic Violence Intervention Program.
- Criminal charges – for possession of a firearm (federal; see *Rahimi* case); misdemeanor charge under I.C. 39-6312 (potentially face one (1) year and fine up to \$5,000.00).

Additional Considerations

Notice of Appearance.

For confidentiality, should an attorney sign onto a Civil Protection Order case, to obtain any documents from the Court, a Notice of Appearance must be filed. Should be filed as soon as possible per IRFLP 220(a).

Motion(s) to Continue.

The Full Hearing can be continued for the Respondent (or Petitioner) to obtain counsel, if needed or requested.

Evidentiary Rules.

For Domestic Violence Civil Protection Orders, the Idaho Rules of Family Law Procedure govern evidentiary procedures. (“All relevant evidence is admissible unless prejudicial; confuses issues; cause undue delay; cumulative; unreliable.”).

For Stalking, Telephone Threats, or Threats based on Race, National Origin, Ancestry, or Religion, Idaho Rules of Evidence govern evidentiary procedures.

Additional Considerations

Motion for Strict Compliance.

IRFLP 102 states a Motion for Strict Compliance in a Civil Protection Order case must be filed no later than two (2) days before the Full Hearing. Good cause must be shown.

Note on “presumption.”

Exceptions: (1) Power imbalance in representation between the parties (??); or (2) the best interest of the child.

Reassignment of Parties.

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. I.C. 39-6306(6).

Advocates.

The Nampa Family Justice Center has Court Advocates at the Courthouse, daily. Advocates generally provide support to the Petitioner / Survivor during the proceeding.

Hope Card.

The Idaho Hope Card Program allows anyone with a valid, long-term (6 months or more) order of protection to request a card that summarizes the order's most important details.

Thank you!

Questions, comments, or concerns?

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