ANALYZING THE IMPACT AND APPLICATION OF THE SEXUAL ASSAULT PROTECTION ORDER IN KING COUNTY

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Laura Jones joined King County Sexual Assault Resource Center (KCSARC) in February 2010 as the CourtWatch Manager. Laura’s experience as a practicing attorney combined with her strategic skills in program planning have been vital in her ability to build CourtWatch. Currently, Laura manages approximately 15 volunteers who serve as CourtWatch Monitors. She is actively involved in networking with community and professional stakeholders who have been invaluable in giving feedback to our process leading to the successful creation of a court monitoring program. Laura also performs the detailed and critical task of analyzing the data collected by the monitors. Earlier this year, she authored an amicus brief on KCSARC’s behalf in State v. Scherner regarding an evidentiary issue before the Washington State Supreme Court.

Prior to joining KCSARC, Laura worked as an associate at a small family law firm in Seattle. She also volunteered with the King County Bar Association’s Family Law Mentor Program and Neighborhood Legal Clinics program. While attending law school, Laura participated in a social justice internship program where she worked at a legal clinic in Managua, Nicaragua, for a summer.

Laura graduated Phi Beta Kappa with her B.A. in Political Science and Spanish from the University of Washington, and obtained her juris doctor from Seattle University School of Law.
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I. CourtWatch Program Overview

King County Sexual Assault Resource Center (“KCSARC”) developed CourtWatch, a court monitoring program, in January of 2010. Court monitoring is a way to gather information about the courts. It includes the real time observation of court proceedings, as well as conducting research on individual cases and court practices and procedures.¹

CourtWatch engages volunteers from the community to observe civil and criminal proceedings related to sexual assault and child abuse. Although there are court monitoring programs throughout the nation and world, CourtWatch is the first in King County, and in Washington State, to focus on sexual assault cases. The program is funded by the Department of Justice, the Satterberg Foundation, and the Office of Crime Victims Advocacy.

Some of the benefits of court monitoring are:

- It engages the public to take responsibility for the justice system
- It holds the justice system accountable for protecting victim and public safety
- Court monitoring increases public understanding of the justice system and awareness of the unique issues surrounding sexual assault cases
- The data collected by CourtWatch volunteers is used to improve the justice system. In addition to preparing reports that focus on a particular aspect of the system, such as this one, CourtWatch also uses the data internally to inform how staff prepares victims for the court process and provides feedback to people within the system.

¹ WATCH
II. The Sexual Assault Protection Order Act

The effects of sexual assault are devastating. As the Washington State Legislature has acknowledged, “Sexual assault is the most heinous crime against another person short of murder. Sexual assault inflicts humiliation, degradation, and terror on victims.” Long term, victims can suffer from post-traumatic stress disorder, behavior problems, sexualized behaviors, and poor self-esteem. This is especially true if the perpetrator has continued contact with the victim after the assault.

Prior to 2006, civil protection orders were not available to many sexual assault victims. If the assault was committed by someone with whom the victim had a domestic, familial, or dating relationship, s/he could petition the court for a domestic violence protection order. If the victim was assaulted by someone other than a family or household member, s/he could ask the court for a civil anti-harassment protection order; however, the victim had to show that there was “a pattern of conduct composed of a series of acts over a period of time.” Therefore, if a victim was assaulted one time by someone other than a family or household member, s/he was unable to petition the court for protection. This is significant because, according to a recent study, and as CourtWatch has observed (see p. 6), the largest group of offenders is comprised of acquaintances or persons known but not related to the victim.

Fortunately, the Washington State Legislature passed RCW 7.90, the Sexual Assault Protection Order Act, in 2006. This law filled a gap that had existed for many sexual assault victims by providing them with a way to obtain “stay away” protection from the offender. Washington is one of only 17 states that have a civil Sexual Assault Protection Order. The process in Washington is as follows:

1. **Filing the Petition:** A victim of sexual assault, the parent or guardian of a victim under age 16, or the guardian of a vulnerable adult may petition the court for a “stand alone” civil protection order by alleging that 1) non-consensual sexual contact or penetration occurred, and 2) the reasons why s/he is afraid of the person who committed the assault.

2. **Ex Parte Temporary Order:** The petitioner then brings the petition before an ex parte judge who reviews the petition. If the judge finds that the petitioner was a victim of non-consensual sexual contact or penetration that gives reasonable fear of future dangerous acts, the judge may issue a temporary protection order that is good for the 14 days before the full hearing on the matter.

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2 RCW 7.90.005
3 Kendall-Tackett, pp. 164-180
4 RCW 26.50 et seq.
5 RCW 10.14.020(2)
6 Berliner & Fine, p. 6
7 O’Connell, p. 2
8 Other states with civil sexual assault protection orders are: Alaska, California, Colorado, Florida, Illinois, Maine, Maryland, Minnesota, Montana, Oklahoma, North Carolina, South Dakota, Tennessee, Texas, Vermont, and Wisconsin (American Bar Association Commission on Domestic Violence, June 2009).
9 RCW 7.90.020-.040
10 RCW 7.90.110-120
3. **Service of Process:** The petitioner must personally serve the respondent at least five days before the full hearing to give the respondent notice of the hearing date and the allegations against him/her in the petition. If the respondent is not personally served within that time frame, the court will set a new hearing date.\(^{11}\)

4. **Full Hearing:** If the court finds by a preponderance of the evidence that the petitioner was a victim of non-consensual sexual contact or penetration, the court may issue a protection order that will be valid for up to two years.\(^{12}\)

\(^{11}\) RCW 7.90.050
\(^{12}\) RCW 7.90.090
III. Project Design

The purpose of this report is to assess the impact and application of the Sexual Assault Protection Order Act (RCW 7.90) in King County Superior Court.

The protection order process is incredibly significant for the victim. It is often the victim’s first contact with the legal system, setting the tone for future interactions, and it is typically the most dangerous time for the victim.

**Compiling data**

In order to compile data for this report, CourtWatch reviewed all of the Sexual Assault Protection Order (SAPO) cases filed in or transferred to King County Superior Court in 2010. Our review of the Electronic Court Record file included documentation of:

- Petitioner/respondent genders, ages, relationship
- Venue
- Contents of the SAPO petitions and final orders
- Evidence presented in court
- Case disposition

Additionally, CourtWatch staff and volunteers observed and took notes on 51 SAPO hearings in 41 different cases at both the King County Courthouse and Maleng Regional Justice Center. In addition to the above factors, they also documented safety, courtroom environment, and accessibility issues.

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13 Information about cases that were filed was obtained from court calendars received from the clerk’s office and via a data dissemination request from the Department of Judicial Administration.
14 See Appendix for the SAPO monitoring form used by volunteers
V. CourtWatch Findings

A. Participants in the SAPO process

SAPO Cases Filed in/Transferred to King County in 2010

There were a total of 68 Sexual Assault Protection Order (SAPO) cases filed in or transferred to King County in 2010. Forty of these cases took place at the Maleng Regional Justice Center (MRJC) in Kent, and 28 took place at the King County Courthouse in Seattle.

Petitioners

A total of 36 cases were filed by female petitioners 16 years or older, and there were 29 cases filed on behalf of a minor child. Only 2 cases were filed by male petitioners 16 years or older, and only 1 case was filed on behalf of a vulnerable adult.
In 57 of the cases, the respondents were adult males. The respondents were minor males in 10 of the cases, and 1 of the respondents was a minor female.

**Relationships Between the Parties**

While the respondent was an acquaintance in the majority of the cases, there was a wide range of relationships between the parties in the SAPO cases reviewed. It is significant to note that the respondent was a stranger in only 3 of the cases, which reinforces the fact that most sexual assaults are committed by someone known to the victim.

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15 The relationship between the parties in each case was determined by what was alleged in the petition or at the hearing.

16 Two-thirds of victims ages 18-29 had a prior relationship with the offender (Greenfield, 1997). In child sexual abuse cases, 75-80% of the abuse is committed by parents, step-relatives, family friends, neighbors or authority figures (Finkelhor, 1979), (Russell, 1983).
Ongoing Investigation: There was an ongoing criminal investigation in 12 of the cases. In 4 of these cases, that was apparent because the petitioner informed the judge of such. In the other 8 cases, criminal charges were subsequently filed.

Criminal Case Resolved: In one of the cases, the petitioner sought a protection order after the criminal case against the defendant had been resolved. The respondent had pled guilty to a lesser offense, and because a criminal SAPO or no contact order was not issued, he still posed a threat to the victim.

Witness: In one of the cases, the petitioner filed for a SAPO after she was assaulted by the respondent, and then witnessed him commit another crime.

Unknown: In a large majority of the cases (54), the context in which the SAPO was sought was unknown.
B. Case Outcomes, Relief Granted, and the Effectiveness of SAPOs

SAPOs were granted 50% of the time, they were dismissed or stricken 44% of the time, and they reached some other resolution 6% of the time.

When a SAPO was granted, the following relief was given to the petitioners:

- In 32 cases, the respondent was ordered not to have contact with the petitioner
- In 32 cases, the respondent was excluded from the petitioner’s residence, workplace, day care and/or some other location specified in the order
- In 32 cases, the respondent was also excluded from coming within a certain distance of the petitioner’s residence, workplace, day care, and/or some other location specified in the order. The distances ranged from 10 feet to 1,000 feet, with the majority specifying 500 feet.
- In 2 cases, the respondent was ordered to transfer schools

Thus, SAPOs generally ordered the respondent to stay away from the petitioner. Of the SAPOs that were granted, 32 were in effect for 2 years, and 2 were in effect for one year.

Based on an electronic court records search, as of this date, none of the respondents in the 34 cases where a SAPO was issued have subsequently been criminally charged with violating the terms of the SAPO. Based on this information, SAPOs appear to be a highly effective tool in protecting the safety of the petitioners.
C. Procedure

i. Service of Process

The SAPO statute requires personal service of the petition, any temporary orders, and the final order on the respondent. This is interesting in light of the fact that SAPOs, Anti-Harassment Orders (AHOs) and Domestic Violence Protection Orders (DVPOs) are all essentially “stay away” orders, yet SAPOs are the only type of protection order where alternative means of service are not permitted by statute.17 A DVPO can be served via certified mail or publication18, and an AHO can be served by publication.19

In the cases that CourtWatch observed, the primary reason that hearings were continued was so that the petitioner could personally serve the respondent. In 10 of the cases, it took three or more hearings to resolve the case due to the petitioner’s inability to serve the respondent. This means that resolution of these cases took at least 8 weeks, with the petitioner having to come to court every 2 weeks to request a continuance, in addition to having to come into court to file the petition. Moreover, in 9 cases where the petitioner was unable to personally serve the respondent, the cases were dismissed because the petitioner stopped showing up to court.

Based on the above information, the personal service requirement presented an issue in at least 29% of the SAPO cases that made it past the ex parte phase.

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17 There were provisions for alternative means of service in the original senate bill; however, those provisions were eliminated from the substitute senate bill. (SB 6478, 2005-06)
18 RCW 26.50.050
19 RCW 10.14.125
CourtWatch Recommendation for Improvement:

RCW 7.90 should be amended to allow for alternative means of service via publication or certified mail if the petitioner can support his/her belief that the respondent is avoiding service. In addition to making the statute more consistent with the statutes of other similar protection orders, it would help to prevent the problems discussed on the previous page.

Another way to address these issues would be to allow petitioners who were unable to serve the respondent to continue their hearings telephonically. In Pierce County, for example, if the petitioner is unable to serve the respondent, the petitioner or her advocate can call into the clerk’s office and ask for the case to be continued. If a system such as this were implemented in King County, it would prevent petitioners from having to make arrangements to come to court every two weeks, and it would likely reduce the number of petitioners who stop showing up to court. It would also save court resources by reducing the number of hearings.

ii. Making a Record of the Hearing

CourtWatch observed 7 instances where cases were continued or granted “off the record,” which means that the judges signed the orders without calling the petitioner before them. While we recognize that this method can save the court’s time and resources, it is also problematic.

Judges granted continuances and extended temporary orders off the record when the petitioner had been unable to serve the respondent. The bailiff would call the petitioner up to the side of the bench while the judge was conducting another hearing to have the petitioner sign the order and to give them instructions. We also observed judges grant SAPOs off the record when the respondent was not present. The judge would subsequently sign the order in between cases or during a break in the proceedings.

This is in violation of RCW 7.90.120(3), which states that renewals of ex parte temporary or final sexual assault protection orders “may be granted only in open court.” If the court fails to follow the statute, the respondent could appeal the decision on that basis and the petitioner could lose his or her SAPO, having to go through the process again.
CourtWatch Recommendation for Improvement:

Judges should put all continuances of temporary SAPOs and entries of final orders on the record to stay in compliance with RCW 7.90.120. Additionally, before granting a SAPO when the respondent is not present, judges should call the petitioner before them to inquire whether the respondent was properly served, and whether the petitioner has anything to add to the petition. Then, the judges should clearly state what evidence they considered, and that they find by a preponderance of the evidence that a SAPO should be granted.

iii. Rules of Evidence

When the Sexual Assault Protection Order Act was passed in 2006, there was no provision for relaxing the rules of evidence; however, Evidence Rule 1101(c) as amended in 2008 states that the rules of evidence need not be applied in protection order proceedings under RCW 7.90. There still appears to be some confusion as to whether the rules of evidence need to be strictly enforced because some judges run SAPO hearings like trials (even referring to them as such), while other judges conduct the hearings much more informally.

When the judges ran the SAPO hearings like trials, they did not consider the petition in making their decisions. They emphasized that the petition only got the parties to the hearing, and that they would have to prove the allegations in the petition. In this situation, the judges did not consider hearsay evidence, including letters from CPS or law enforcement, and if a parent was bringing the petition on behalf of a child, the parent had to bring the child in to testify. Additionally, in this more formal setting, witnesses were subject to questioning by the parties that resembled direct and cross examination in a trial.

In the more informal setting, judges reviewed the petition in advance and asked if the petitioner had anything to add. Then, if the respondent was present, he was asked to relay his version of the events. Unless the parties were represented, legal objections were not typically made. Thus, each party gave the court its version of what happened, witnesses were allowed to tell the court what they knew, and then the judge made a decision.
CourtWatch Recommendation for Improvement:

As most of the parties in a SAPO hearing do not have an attorney, the courts should follow ER 1101(c) and relax the rules of evidence. Attorneys go to law school for three years and study the rules of evidence extensively, whereas the average person may have difficulty grasping the concept of evidentiary rules such as hearsay. Relaxing the rules of evidence would make the SAPO process much more accessible to the average petitioner or respondent.

D. Fifth Amendment

The Washington State Legislature recognizes that “[v]ictims who do not report the crime still desire safety and protection from future interactions with the offender.”20 The civil SAPO was created to give those victims a way to seek that protection, and at SAPO hearings judges did not typically ask whether there was an ongoing criminal investigation.

This can become an issue because statements made by the respondent in the SAPO proceeding may be used against him or her in a subsequent criminal proceeding. CourtWatch observed one instance where a minor respondent’s mother was not advised of his Fifth Amendment rights, and she proceeded to make several incriminating statements about the nature of the assault. In cases such as that one, if the respondent is not properly advised of his constitutional rights and criminal charges are filed, it could jeopardize the evidence admitted in the criminal case.

CourtWatch only observed two cases where the respondents were advised by the judge of their Fifth Amendment rights; however, in both of those cases criminal charges had been filed, and the respondents opted to exercise their right. This was to the benefit of both the petitioner and the respondent: statements regarding the SAPO case could not be used against the respondent in a subsequent criminal proceeding, and the petitioner was able to get protection from the respondent.

Conversely, when criminal charges had not yet been filed and judges did inquire about whether there was an ongoing investigation, sometimes they would continue the case pending the outcome of that investigation. The length of a criminal investigation varies, but it can often take many months, and a continuance pending the outcome of the investigation means that the petitioner would have to keep coming back to court to get the temporary protection order reissued. Therefore, a SAPO should not be continued simply because criminal charges might be filed.

20 RCW 7.90.005
CourtWatch Recommendation for Improvement:

Whether there is an ongoing criminal investigation should be a standard inquiry in SAPO cases to identify potential Fifth Amendment issues. If there is an investigation, or if charges have been filed, respondents should be advised of their Fifth Amendment rights or the case should be continued to allow them time to consult with an attorney about their rights. However, the SAPO hearing should not be continued pending the outcome of the criminal investigation as this places an undue burden on the petitioner to continue returning to court while the investigation is ongoing.

E. Accessibility

Often, the protection order process is the parties’ first contact with the legal system. If they have never been to court, they are likely nervous and do not know what to expect. In order to make the courts more accessible to these parties, the following issues should be addressed.

i. Ease of Locating Courtroom

a. King County Courthouse

SAPO hearings are typically held in courtroom E-960, and CourtWatch monitors observed several different judges presiding over the calendar during 2010. The court staff at this courthouse made SAPO proceedings more accessible to parties by noting room assignment changes on the door of E-960, and by taking roll before the calendar began to determine whether the parties were present.

CourtWatch Recommendation for Improvement:

1. A list of the scheduled cases should be posted on the courtroom door.

2. A sign on the courtroom door that instructs the parties to check in with the clerk when they arrive should be clearly posted.

3. The name of the judge should be clearly posted either on the courtroom door or on a name plate on the bench so that the parties can tell which judge is presiding over their hearing.
b. Maleng Regional Justice Center

The judges at this courthouse rotate through the SAPO calendar, so the courtroom assignment changes several times throughout the year. The court staff at this courthouse made SAPO proceedings more accessible to the parties by posting a list of cases on the door of the courtroom, and some of the courtrooms have signs noting that the parties must check in with the clerk upon entry.

CourtWatch Recommendation for Improvement:

1. The room assignment for the Anti-Harassment calendar is posted by the elevators on each floor; however, it should list both the SAPO and Anti-Harassment calendar on the signs, as both types of hearings are scheduled together.

2. There should be signs on ALL courtroom doors telling the parties to check in with the clerk when they arrive.

3. Roll should be taken before the calendar begins in case someone did not check in with the clerk, and so that the parties know if the opposing party in their case has shown up to court.

ii. Consistency Between Judges

At both the Maleng Regional Justice Center and the King County Courthouse, the judges rotate through the calendar. While it is to be expected that individual judges will run their courtrooms differently, some of the differences that were observed are dramatic, and it is difficult for the parties to know what to expect when coming to court for a SAPO hearing:

a. Order of the Calendar

The order in which cases are heard varies widely. Many judges will leave SAPOs until the end of the calendar due to the sensitive nature of the proceedings. Some judges hear cases in the order that people arrive at court, or hear the cases where the parties are represented by attorneys first. Different still, other judges hear cases where only one party is present first, and then conduct full hearings where both parties are present.
CourtWatch Recommendation for Improvement:

An announcement to the gallery about the order in which cases will be heard would be very helpful to the parties. Additionally, if cases were always called in the same order, it would provide consistency as the calendar rotates among the judges.

The calendar seemed to run most smoothly and best upheld the privacy of sexual assault victims when judges heard cases in the following order:

1. Anti-harassment and SAPO cases where only the petitioner was present, and the respondent had not been served
2. Anti-harassment and SAPO cases where only one party was present, and there was proper service
3. Anti-harassment cases where both parties were present
4. SAPO cases where both parties were present

CourtWatch Recommendation for Improvement:

Judges should continue to read the Anti-Harassment statute, and before hearing any SAPO cases, the judge should read key definitions and what the petitioner must prove aloud from the SAPO statute.

b. The Law

Prior to hearing anti-harassment and SAPO cases, some of the judges read the Anti-Harassment statute aloud to the parties in the gallery. This provided a very helpful summary of key definitions, and what they would need to prove at the hearing, especially because the majority of the parties have no attorney. Even though the SAPO cases are heard in the same calendar as the Anti-Harassment cases, the judges did not read those statutes aloud.
F. Safety

While there is usually a security officer present at the Domestic Violence Protection Order (DVPO) calendar, unless one of the parties to a SAPO or anti-harassment hearing was in custody, there was typically no security officer present in the courtroom.

The allegations in SAPO cases can be just as serious as those in domestic violence (DV) hearings, and petitioners may be very fearful for their safety as the SAPO hearing can be the first time since the assault that they have any contact with the respondent. Moreover, sometimes interactions between the parties in the Anti-Harassment/SAPO calendar got heated, and on at least one occasion, security had to be called into the courtroom.

It was also unclear where the parties should sit, and which side of the courtroom they should come up to when presenting their cases. Depending on where they were seated, they often had to cross paths. This allowed for subtle interactions between the parties such as glaring, snide comments, and threats, as well as violations of the temporary protection orders.

CourtWatch Recommendations for Improvement:

If a security officer cannot be present at all times during the SAPO or anti-harassment calendar, one should at least stop into the courtroom periodically to make sure that things are not getting out of hand, and as a reminder to parties to be on their best behavior.

Another option would be to schedule SAPO and DV hearings together, as opposed to scheduling SAPOs with the anti-harassment calendar, as the seriousness of DV and SAPO allegations are much more similar than those of SAPOs and anti-harassment orders.

Additionally, one side of the courtroom should be labeled as the seating area for petitioners, and the other for respondents, and the tables (at the RJC) or the bench (in Seattle) should also be labeled accordingly. Judges should also call the parties up one at a time, and remind them which side to come up to when presenting their cases.
G. Support and Representation

i. Legal Advocacy

Navigating the legal system can be confusing and intimidating. Legal advocates help victims of sexual assault and their family members by providing them with information and support, as well as accompanying victims to court hearings. Additionally, in RCW 7.90.060, the Sexual Assault Protection Order Act states that sexual assault advocates “shall be allowed to accompany the victim and confer with the victim, unless otherwise directed by the court.”

Of the 68 SAPO cases that were filed in or transferred to King County Superior Court in 2010, only 24 (35%) of the petitioners were supported by a legal advocate. In those cases where the petitioner was supported by a legal advocate, 19 out of 24 (80%) were successful in obtaining a full SAPO. By comparison, only 15 out of 44 (34%) of petitioners without a legal advocate obtained a full SAPO.

Some of the reasons for the significantly higher success rate with an advocate are:

- Legal advocates can help determine whether a SAPO is the appropriate remedy for the situation
- A legal advocate can assist a petitioner in preparing the petition, making sure that there is enough detail to meet the requirements of RCW 7.90.020
- Legal advocates are also able to explain the protection order process to petitioners so that they are better prepared for what to expect in court
- Having a support person present can give the petitioner the confidence to speak in court
- By being connected to a legal advocate, there is a smaller chance that the petitioner will simply not show up to a hearing

CourtWatch Recommendation for Improvement:

As there appears to be such a strong correlation between having advocate support and success in obtaining a full SAPO, the option of having a legal advocate should be made available to all petitioners seeking a SAPO. Consistently with RCW 7.90.180, the clerk’s office should ensure that the contact information for sexual assault programs serving King County is made available to petitioners seeking a SAPO.
ii. Legal Representation

Generally, the parties in a SAPO proceeding were not represented. Of the 68 SAPO cases that were filed or transferred to King County Superior Court in 2010, only 8 of the petitioners and 11 respondents were represented by an attorney.

It is significant to note that in all of the cases where the petitioner did not have an attorney and the respondent did, the SAPO was dismissed. Similarly, in 3 out of the 4 cases where the petitioner was represented but the respondent was not, the SAPO was granted. Thus, a party who is represented when the other side is not has an extremely high likelihood of the case being decided in his or her favor.

There were only five cases where both sides were represented. The outcomes of those cases were: full SAPOs were issued in two cases; agreed orders were issued in two cases; and the final case was dismissed at the petitioner’s request. Thus, when both parties are represented, it seems to significantly level the playing field.

In RCW 7.90.070, the Sexual Assault Protection Order Act states: “The court may appoint counsel to represent the petitioner if the respondent is represented by counsel.” In Pierce County, for example, there is an attorney who works at the YWCA who is appointed in cases where the respondent is represented. He takes on these SAPO cases on a pro bono basis. In King County, however, the court did not exercise its discretion to appoint counsel for the petitioner in any of the cases observed by CourtWatch.

**CourtWatch Recommendation for Improvement:**

Based on the findings above, the court should exercise its statutory authority to appoint an attorney for the petitioner when the respondent is represented in order to promote fairness in the proceedings. The court could keep a list of attorneys in King County who are familiar with the SAPO process and appoint attorneys from that list to represent petitioners.
V. Conclusion

CourtWatch’s review of SAPO cases filed in or transferred to King County Superior Court indicates that the law has had a positive impact on victim safety. Based on the relationships between petitioners and respondents in these cases, the Sexual Assault Protection Order has clearly filled a gap that had existed for many sexual assault victims, allowing them to obtain “stay away” protection from the offender. With a 50% success rate, and no apparent violations by the respondent after an order was issued, SAPOs appear to be an effective means to protect the safety of sexual assault victims.

With respect to the application of the SAPO statute, CourtWatch has made the following recommendations to improve how these cases are handled in King County:

1. RCW 7.90 should be amended to allow for alternative means of service via publication or certified mail if the petitioner can support her belief that the respondent is avoiding service OR petitioners who are unable to personally serve the respondent should be allowed to continue the hearing telephonically as is done in other counties.

2. Judges should make a clear record when they grant the SAPO and the respondent is not present, and when they grant continuances.

3. The court should follow ER 1101 to relax the rules of evidence in SAPO hearings.

4. Judges should inquire whether there is an ongoing criminal investigation to identify potential Fifth Amendment Issues; however, the SAPO should not be continued pending the outcome of the investigation.

5. At the King County Courthouse, the SAPO calendar can be made more accessible to the parties by posting a list of scheduled cases on the courtroom door, clearly posting a sign on the door instructing the parties to check in with the clerk, and ensuring that the name of the judge is clearly posted.

6. At the Maleng Regional Justice Center, the SAPO calendar can be made more accessible to the parties by posting a sign by the elevators that lists both the SAPO and Anti-Harassment calendar, clearly posting signs on all courtroom doors telling the parties to check in with the clerk, and taking roll before the calendar begins.

7. The court clerk or bailiff should make an announcement to the gallery about the order in which cases will be heard. Our recommended order of cases is as follows:

   a. Anti-harassment and SAPO cases where only the petitioner is present, and the respondent has not been served.

   b. Anti-harassment and SAPO where only one party is present, and there was proper service.
c. Anti-harassment cases where both parties are present

d. SAPO cases where both parties are present

8. Judges should read key provisions of the Sexual Assault Protection Order Act and the Anti-Harassment statute before hearing any cases.

9. A security officer should, at a minimum, periodically stop into the courtroom where anti-harassment and SAPO cases are heard OR the SAPO hearings should be scheduled along with DV hearings.

10. The seating areas and tables should be clearly labeled to minimize contact between the parties.

11. The option of having a legal advocate should be made available to all petitioners seeking a sexual assault protection order.

12. The court should exercise its statutory authority to appoint an attorney for the petitioner when the respondent is represented in order to promote fairness in the proceedings.
VI. Bibliography

Statutes, Rules & Regulations

ER 1101, Applicability of Rules

RCW 7.90, Sexual Assault Protection Order Act

RCW 10.14, Harassment

RCW 26.50, Domestic Violence Prevention

Senate Bill 6478 (2005-06)
Other Publications


WATCH. “What is court monitoring and what are the benefits?” <http://www.watchmn.org/sites/default/files/What%20is%20court%20monitoring%20and%20what%20are%20its%20benefits.pdf>

SEXUAL ASSAULT PROTECTION ORDER (SAPO) MONITORING FORM

Your name: ______________________________ Date: ______________________________

PARTICIPANT INFORMATION:
Case #: ________________________________ □ Judge □ Commissioner □ Pro Tem: ______________________________
Petitioner: ______________________________ Respondent: ______________________________
What was the petitioner’s gender? □ M □ F □ Asian/Pacific Islander □ Caucasian
What was the petitioner’s apparent race/ethnicity? □ African □ Middle-Eastern/Arab □ Hispanic/Latino
What was the respondent’s gender? □ M □ F □ Native American □ Other □ Unknown
What was the respondent’s apparent race/ethnicity? □ African □ Middle-Eastern/Arab □ Hispanic/Latino
□ Asian/Pacific Islander □ Caucasian
□ Other □ Unknown
Did the petitioner appear to understand English? □ Yes □ No □ Can’t tell
Did the respondent appear to understand English? □ Yes □ No □ Can’t tell
Was an interpreter present? □ Yes □ No □ Unknown If yes, what language? ______________________________
Did any party have a visible disability? □ Yes □ No □ Unknown If yes, who/what disability? ______________________________
What is the relationship between the petitioner and the respondent? ______________________________
Was an attorney present for the petitioner? □ Yes □ No □ Unknown Name: ______________________________
Was an attorney present for the respondent? □ Yes □ No □ Unknown Name: ______________________________
Was an advocate present for the petitioner? □ Yes □ No □ Unknown Name: ______________________________

COURTROOM ENVIRONMENT:
Where did you monitor this proceeding? □ Seattle Courthouse □ Regional Justice Center
Was there a list of cases posted outside the courtroom? □ Yes □ No
Was the SAPO calendar separated from the anti-harassment calendar? □ Yes □ No
Did anyone ask who you were and/or why you were in court? □ Yes □ No

HEARING:
What time did this hearing begin? ___________ What time did it end? ___________
Was the SAPO on behalf of a child under age 16? □ Yes □ No □ Unsure
Was the respondent a minor? □ Yes □ No □ Unsure
Was there a discussion of the violence that led to the petitioner’s request? □ Yes □ No
If yes, please describe. ______________________________
Did the judge ask whether the petitioner called the police? □ Yes □ No □ N/A
Did the judge ask whether there was an ongoing criminal investigation? □ Yes □ No □ N/A
If the respondent was pro se, did he/she cross examine the petitioner? □ Yes □ No □ N/A
Did the judge advise the respondent of his/her 5th Amendment rights? □ Yes □ No □ N/A
Did the respondent plead the 5th? □ Yes □ No □ N/A

If the respondent was represented by an attorney, did the judge appoint counsel for the petitioner or give him/her a chance to obtain counsel? □ Yes □ No □ N/A

Did the judge ask whether respondent contacted petitioner since the assault? □ Yes □ No □ N/A

If there was a hearing, what evidence was presented to the court? □ Testimony from the parties
□ Testimony from witness: ________________________ □ Other: ________________________

Did the judge show empathy toward the petitioner? □ Yes □ No

Please explain: ______________________________________

What was the outcome? □ Granted after hearing □ Dismissed after hearing □ Hearing continued
□ Dismissed- petitioner absent □ Granted- respondent absent □ Stricken- both parties absent

If the order was issued, what relief was granted to the petitioner? ________________________

If the order was issued, what instructions did the judge give to the respondent? ________________________

If the order was not issued, did the judge explain why? □ Yes □ No □ N/A

If yes, what was the explanation? ______________________________________

If the order was continued, did the judge explain why? □ Yes □ No □ N/A

If yes, what was the explanation? ______________________________________

If the order was continued, did the judge extend the temporary protection order? □ Yes □ No □ N/A

What is the new hearing date/time? ________________________

SAFETY ISSUES:

Were the parties left alone together at any time during the hearing? □ Yes □ No □ Unknown

Where were the parties seated in the courtroom before their case was called? ________________________

Was there any interaction between the petitioner and respondent (e.g. talking, glaring, touching)? □ Yes □ No □ Unknown
If yes, please describe: ______________________________________

Was there a security officer present in the courtroom during the SAPO hearing? □ Yes □ No

Did anything else happen that raised safety concerns for you? □ Yes □ No □ Maybe

Please describe: ______________________________________

PLEASE NOTE ADDITIONAL OBSERVATIONS BELOW: Write direct quotes as often as possible and indicate quotes with quotation marks. Please document the time that the comment was made as this allows us to listen to the recording. Write down positive assessments as well!