

WEAPONS SURRENDER BENCH GUIDE

1. RCW 9.41.800(1) – (a) PO/NCO + (b) Used Weapon In Felony Or Ineligible

<p><u>(1) Court enters PO/NCO under –</u></p> <ul style="list-style-type: none"> • 7.105 (civil PO), or • 9.46.080 (harassment sentencing NCO), or • 10.99.040, .045 (DV NCO), or • 26.09.050, .060 (dissolution restrng order), or • 26.26B.020 (parentage restraining order), or • 26.26A.470 (parentage restraining order);* and <p><u>(2) Court finds a preponderance of the evidence shows restrained person either –</u></p> <ul style="list-style-type: none"> • (a) Used. Used, displayed, or threatened to use firearm or dangerous weapon in a felony, or • (b) Ineligible. Is ineligible to possess a firearm under 9.41.040 [See FIREARM INELIGIBILITY BG] <p>*[Note – Does not include other NCOs such as 9A.46.055 (stalking), 9A.44.210 (sexual assault)]</p>	<p><u>Mandatory Weapons Order –</u></p> <ul style="list-style-type: none"> • Civil Ex Parte Temp PO • Civil Full PO • Criminal NCO Pretrial [Order To Prohibit Weapons only] • <i>[** State v. Marshall, 23650101, surrender may not be ordered PT]</i> • Criminal NCO Sentencing [Order To Surrender And Prohibit Weapons]
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2. RCW 9.41.800(3) – (a) Ex Parte TPO + (b) Irreparable Injury Could Result

<p><u>Court May Issue Order To Surrender And Prohibit Weapons where –</u></p> <ul style="list-style-type: none"> • (a) Ex Parte Temp PO. Court issues ex party temporary PO without notice to restrained person, and • (b) Irreparable Injury. Court finds irreparable injury could result if weapons order not issued 	<p><u>Discretionary Weapons Order –</u></p> <ul style="list-style-type: none"> • Civil Ex Parte Temp PO <p><u>Does Not Apply –</u></p> <ul style="list-style-type: none"> • Full Protection Order • Any criminal NCO
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3. RCW 9.41.800(4) – (a) PO/NCO + (b) Serious & Imminent Threat

<p><u>Court May Issue Order To Surrender And Prohibit Weapons Where –</u></p> <ul style="list-style-type: none"> • (a) Court issues PO/NCO, and • (b) Court finds that restrained person’s possession of a firearm or other dangerous weapon presents a serious and imminent threat to – <ul style="list-style-type: none"> • (i) Public health or safety, or • (ii) The health or safety of any individual 	<p><u>Discretionary Weapons Order –</u></p> <ul style="list-style-type: none"> • All PO types • Criminal NCO Pretrial [**prohibit order only] • Criminal NCO Sentencing [surrender and prohibit]
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4. RCW 9.41.800(2) – (a) PO/NCO + (b) Actual Notice + (c) No Harm/Credible Threat

(1) Restrained Person Subject To PO/NCO Under –

- 7.105 (civil PO), or
- 9.46.080 (harassment sentencing NCO), or
- 10.99.040, .045 (DV NCO), or
- 26.09.050, .060 (dissolution restrng order), or
- 26.26B.020 (parentage restraining order), or
- 26.26A.470 (parentage restraining order);* **and**

(2) PO/NCO Issued After Hearing Where Restrained Person –

- (a) Received actual notice, **and**
- (b) Had opportunity to participate, **and**

(3) PO/NCO Restrains Person From [see PO/NCO “No Harm” Provision] –

- (a) **Conduct**. Harassing, stalking, or threatening the protected party, an intimate partner of the party, or child of the intimate partner, party, or protected person, **or**
- (b) **Reasonable Fear**. Engaging in other conduct that would place a protected person or an intimate partner in **reasonable fear of bodily injury** to the intimate partner, protected person, or child; **and**

(4) PO/NCO Includes –

- (a) **“No Harm” Provision**. By its terms, explicitly prohibits the use, attempted use, or threatened use of **physical force** against the protected person, intimate partner, or child that would reasonably be expected to cause **bodily injury, or**
- (b) **Credible Threat Finding**. Finding that restrained person represents a **credible threat to physical safety** of protected person, intimate partner, or child

Mandatory Weapons Order –

- Civil Temporary PO where Temp PO extended & restrained person present
- Civil Full PO
- Criminal NCO Pretrial [Order To Prohibit Weapons only]
[***State v. Marshall*, 23650101, surrender may not be ordered PT]
- Criminal NCO Sentencing [Order To Surrender And Prohibit Weapons]

Does Not Apply –

- Civil Ex Parte Temp PO

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5. Court Shall Sua Sponte Consider RCW 9.41.800 Weapons Order When Civil Protection Order Or Criminal No Contact Order Issued

- **Ex Parte Temporary Protection Order**. RCW 7.105.305(1) – “In issuing the order, the court shall consider the provisions of RCW 9.41.800, and order the respondent to surrender, and prohibit the respondent from accessing, having in his or her custody or control, possessing, purchasing, attempting to purchase or receive, or receiving, all firearms, dangerous weapons, and any concealed pistol license, as required in RCW 9.41.800.”
- **Full Protection Order**. RCW 7.105.310(1)(m) – Court may “[c]onsider the provisions of RCW 9.41.800, and order the respondent to surrender, and prohibit the respondent from accessing, having in his or her custody or control, possessing, purchasing, attempting to purchase or receive, or receiving, all firearms, dangerous weapons, and any concealed pistol license, as required in RCW 9.41.800 ...”.
- **Domestic Violence No Contact Order**. RCW 10.99.040(2)(b), .045(3)(a).
- **Harassment No Contact Order**. RCW 9A.46.050.
- **Promoting Prostitution No Contact Order**. RCW 9A.88.160(1).
- **Sexual Assault No Contact Order**. RCW 9A.44.210(1)(b).
- **Stalking No Contact Order**. RCW 9A.46.055(1)(b).
- **Trafficking No Contact Order**. RCW 9A.40.104(4).

6. What Does A Weapons Order Do? Surrender + Prohibit.

- A weapons order entered pursuant to RCW 9.41.800 shall –
 - **Firearms And Other Dangerous Weapons**. (1) Require the restrained person to immediately surrender all firearms and other dangerous weapons, and (2) prohibit the restrained person from accessing, obtaining or possessing any firearms or other dangerous weapons.
 - **Concealed Pistol License**. (1) Require the restrained person to immediately surrender any concealed pistol license issued under RCW 9.41.070, and (2) prohibit the restrained person from obtaining or possessing a concealed pistol license.

7. Proof Of Surrender Or Declaration Must Be Filed Within 5 Judicial Days

- **Respondent Must File Compliance**. RCW 9.41.804 – Within 5 judicial days of entry of surrender order, the restrained person ordered to surrender firearms, dangerous weapons, and concealed pistol license must file with the clerk of the court either –
 - (1) **Proof Of Surrender + Receipt**. Proof of surrender and LE receipt forms, or
 - (2) **Non-Surrender Declaration**. A declaration of non-surrender form.
- **Misdemeanor**. RCW 9.41.810 – Failure to comply within 5 judicial days is a misdemeanor.

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8. Immediate Surrender To Law Enforcement Officer When Personal Service

- **LEO Serving Weapons Order Shall Inform Respondent.** RCW 9.41.801(2) – A law enforcement officer serving an order to surrender shall inform the respondent that the order is –
 - (1) **Effective Now.** Effective upon service and
 - (2) **Immediate Surrender.** The respondent must immediately surrender all firearms, dangerous weapons, CPLs.
- **LEO Serving Weapons Order Shall Conduct Lawful Search.** RCW 9.41.801(2) – “[The law enforcement officer serving a weapons order shall] conduct any search permitted by law for such firearms, dangerous weapons, and concealed pistol license.”
- **LEO Serving Weapons Order Shall Take Possession.** RCW 9.41.801(2) – “The law enforcement officer [serving a weapons order] shall take possession of all firearms, dangerous weapons, and any concealed pistol license belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search.”

9. Surrender Only To Local Law Enforcement Agency When Possession Not Taken During Personal Service Of Weapons Order

- **Surrender To Local Law Enforcement.** RCW 9.41.800(6) – “The court shall require the party to surrender [firearms, dangerous weapons, concealed pistol license(s)] ... to the local law enforcement agency.”
 - **KCSO.** District Court designates the Kitsap County Sheriff’s Office as the “local law enforcement agency” to which respondent must surrender weapons (except for weapons seized by the law enforcement agency serving the weapons order).
- **Immediate Surrender On Day Of Hearing.** RCW 9.41.801(2) – “The respondent must immediately surrender all firearms, dangerous weapons, and any concealed pistol license in a safe manner to the control of the local law enforcement agency on the day of the hearing at which the respondent was present in person or remotely.”
- **Surrender Within 24 Hours After Alternate Service.** RCW 9.41.801(2) – “Alternatively, if personal service by a law enforcement officer is not possible, and the respondent did not appear in person or remotely at the hearing, the respondent shall surrender the firearms in a safe manner to the control of the local law enforcement agency within 24 hours of being served with the order by alternate service.”

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10. Duration Of Weapons Order

- **District Court Practice – Weapons Order Same Length As PO/NCO.** District Court practice is to initially make the length of a weapons order the same as the length of the PO/NCO. The restrained person may thereafter file a motion to modify or terminate the weapons order.
- **PO/NCO Expires – So Must A Weapons Order.** A weapons order must expire when a PO/NCO expires because a weapons order is not authorized under RCW 9.41.800 absent an active PO/NCO.
- **PO/NCO Terminated Early – So Must A Weapons Order.** If the court terminates a full PO or NCO before the order expires, the court must also terminate the weapons order because the court no longer has jurisdiction under RCW 9.41.800 to allow the weapons order to continue absent a co-existing PO/NCO in that case.

11. No Weapons Order Service Fees Permitted In Civil PO Cases

- RCW 7.105.105(9)(a) – “No fees for service of process may be charged by a court or any public agency to petitioners seeking relief under this chapter.”

12. Weapons Order Service And Surrender (RCW 9.41.801)

- **Policy – Heightened Risk Of Lethality & Swift Compliance.** .801(1) – “Because of the heightened risk of lethality to petitioners when respondents to protection orders become aware of court involvement and continue to have access to firearms, and the frequency of non-compliance with court orders prohibiting possession of firearms, law enforcement and judicial processes must emphasize swift and certain compliance with court orders prohibiting access, possession, and ownership of all firearms.”
- **LE Shall Serve Weapons Order.** RCW 9.41.800(7)(a) – LE shall personally serve a weapons order on respondent. See also RCW 7.105.150(1)(a)(i).
 - **LEA Where Respondent Resides.** RCW 7.105.155(1) – The law enforcement agency (as specified in the order) where the respondent resides shall serve the respondent.
 - **Examples** – LE service of weapons order required where – (1) weapons order entered ex parte; or (2) weapons order entered after full protection order granted but respondent not present.
- **Immediate Surrender.** 801(2) – Serving LE officer shall inform respondent that (1) surrender is effective on service, and (2) all firearms, etc. must immediately be surrendered to LE officer serving the surrender order.
- **LE Lawful Search.** 801(2) – LE officer serving weapons order shall “conduct any search permitted by law for such firearms, dangerous weapons, and concealed pistol license. The law enforcement officer shall take possession of all firearms, dangerous weapons, and any concealed pistol license belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search.”

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12. Weapons Order Service And Surrender (RCW 9.41.801) Continued ...

- **Weapons Order Entered In Court + Respondent Present.**
 - **Service Of Weapons Order Not Required.** 801(2) – If a weapons order is entered in open court and respondent appears, no further service is required.
 - **Example.** Respondent appears at full PO hearing, court grants full PO and enters weapons order. Service of a weapons order is not required.
 - **Service Of Any Order Waived.** RCW 7.105.150(4) – “If an order entered by the court recites that the respondent appeared before the court, either in person or remotely, the necessity for further service is waived and proof of service of that order is not necessary, including in cases where the respondent leaves the hearing before a final ruling is issued or signed.”
- **Weapons Order Entered In Court + Respondent Present – Surrender Day Of Hearing.** .801(2) – If a weapons order is entered in open court and respondent appears, “respondent must immediately surrender all firearms, dangerous weapons, and any concealed pistol license in a safe manner to the control of the local law enforcement agency on the day of the hearing at which the respondent was present in person or remotely.”
 - Or respondent must sign and file a Declaration Of Non-Surrender
- **Personal Service Not Possible – Surrender Within 24 Hours Of Service.** .801(2) – “[I]f personal service by a law enforcement officer is not possible, and the respondent did not appear in person or remotely at the hearing, the respondent shall surrender the firearms in a safe manner to the control of the local law enforcement agency within 24 hours of being served with the [weapons] order by alternate service.”
- **LE Receipt To Court Within 24 Hours.** 801(3) – “At the time of surrender, a law enforcement officer taking possession of firearms, dangerous weapons, and any concealed pistol license shall issue a receipt identifying all firearms, dangerous weapons, and any concealed pistol license that have been surrendered and provide a copy of the receipt to the respondent. The law enforcement agency shall file the original receipt with the court within 24 hours after service of the order and retain a copy of the receipt, electronically whenever electronic filing is available.”
- **Lawful Owner Not Respondent.** 801(5) – LE may return surrendered items to lawful owner not the respondent upon several findings. See the statute for details.

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13. Compliance Review Hearings “As Soon As Possible” (RCW 9.41.801(6))

- **Mandatory Compliance Review Hearings.** Courts shall develop procedures to verify timely and complete compliance with surrender orders. Compliance review hearings shall be held as soon as possible upon a court’s receipt from LE of proof of service.
 - **14 Days Later** – District Court sets compliance review hearings 14 days after a weapons order is entered.
- **Compliance Review Hearing Not Required If Compliance Findings.** A compliance review hearing is not required if court can enter findings of – (1) proof of surrender or declaration of non-surrender, and (2) LE verification (and other relevant evidence) makes a sufficient showing that the restrained person timely and completely surrendered all firearms and dangerous weapons in their custody, control, or possession including concealed pistol license.
 - **Example** – Court enters full PO or NCO and weapons order, respondent present, and signs Declaration Of Non-Surrender. A compliance review hearing is not required.
- **Compliance Review Hearing Required If Insufficient Record Of Compliance.** If court does not have sufficient record on which to make a compliance finding, court must set a compliance review hearing as soon as possible at which respondent must (1) be present; and (2) provide proof of compliance with the court’s weapons order.
 - **Examples** – (1) Respondent served with temporary PO and weapons order and FTAs at full protection order and compliance hearing. (2) Respondent appears at full protection order and compliance hearing, but neither Declaration Of Non-Surrender nor Proof Of Surrender + LE Receipt filed. Court must set a compliance review hearing.

14. Restrained Person Must Prove Compliance By A Preponderance

- **Statute Assigns Burden.** By requiring the restrained person to file evidence of compliance, the burden of proof is on them by a preponderance of the evidence. *Braatz v. Braatz*, 2 Wn.App.2d 889, ¶¶22-23,25, *review denied*, 190 Wn.2d 1031 (2018).
- **The Issue – Were All Weapons Surrendered?** The issue is not whether proof of surrender is filed but whether the restrained person surrendered all their weapons. *Braatz*, ¶24.
 - **Prima Facie Evidence Of Compliance.** Filed proof of surrender and LE receipt are prima facie evidence of surrender. *Braatz*, ¶25.
 - **Conflicting Evidence.** But if conflicting evidence of surrender, court must weigh that evidence and determine whether the restrained person has met their burden. *Braatz*, ¶25.
 - **Efforts To Comply Irrelevant.** The restrained person’s efforts to comply with a weapons order are not relevant. *Braatz*, ¶28.

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15. Contested Compliance Review Hearing

- **Petitioner May Contest Compliance.** RCW 9.41.801(6) – “Courts shall make available forms that petitioners may complete and submit to the court in response to a respondent’s declaration of whether the respondent has surrendered weapons.”
- **Prosecutor May Appear.** RCW 9.41.801(8)(a) – “To help ensure that accurate and comprehensive information about firearms compliance is provided to judicial officers, a representative from either the prosecuting attorney’s office or city attorney’s office, or both, from the relevant jurisdiction may appear and be heard at any hearing that concerns compliance with an order to surrender and prohibit weapons issued in connection with another type of protection order.”
- **Prosecutor Advocate Or Staff May Appear.** RCW 9.41.801(8)(b) – “Either the prosecuting attorney’s office or city attorney’s office, or both, from the relevant jurisdiction may designate an advocate or a staff person from their office who is not an attorney to appear on behalf of their office. Such appearance does not constitute the unauthorized practice of law.”
- **Court May Allow Prosecutor To Question Respondent.** RCW 9.41.801(9)(b) – “To provide relevant information to the court to determine compliance with the order, the court may allow the prosecuting attorney or city attorney to question the respondent regarding compliance.”

16. LE Return Of Surrendered Firearm Or CPL To Restrained Person

- RCW 9.41.801(10) – “All law enforcement agencies must have policies and procedures to provide for the acceptance, storage, and return of firearms, dangerous weapons, and concealed pistol licenses that a court requires must be surrendered under RCW 9.41.800. A law enforcement agency holding any firearm or concealed pistol license that has been surrendered under RCW 9.41.800 shall comply with the provisions of RCW 9.41.340 and 9.41.345 before the return of the firearm or concealed pistol license to the owner or individual from whom it was obtained.”

17. AOC Shall Create Forms & Report Annually On Firearms (RCW 9.41.801(11))

- **Forms.** “The administrative office of the courts shall create a statewide pattern form to assist the courts in ensuring timely and complete compliance in a consistent manner with orders issued under this chapter.”
 - **Alternative Forms Permitted.** A non-AOC alternative form may be used but must contain substantially the same information as the forms developed by AOC. *Braatz v. Braatz*, 2 Wn.App.2d 889, ¶29 n.7, *review denied*, 190 Wn.2d 1031 (2018).
- **AOC Annual Report.** “The administrative office of the courts shall report annually –
 - **(1) Number Of Orders.** On the number of orders issued under this chapter by each court, and
 - **(2) Compliance.** The degree of compliance, and
 - **(3) Firearms Surrendered.** The number of firearms obtained, and may make recommendations regarding additional procedures to enhance compliance and victim safety.”
 - **Note** – Make sure to type the number of firearms surrendered in the *Weapons Surrender Compliance Findings And Orders* at ¶1.5, bottom of page 2.