

Prove your Protection Order or family law case

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Learn rules and requirements, and get suggestions for documents and other evidence you should gather to “prove” your case at a court hearing or trial in a protection order or family law case.

1. Fast facts

The lists in this guide are just suggestions. Exactly what evidence will help your protection order or family law case depends on your unique situation. You won’t need every list, or every item on a list. You may need items not listed here.

Will the court gather evidence in my family law or protection order case?

No. **If you want the judge to consider something in your case, you must find, file, and present it yourself.** The court doesn’t independently investigate cases. The parties must prepare the **record** that the judge will use to make a decision (to issue a court order).

“Judge” here refers to judges and court commissioners.

In some situations, the court may do a Judicial Information System (JIS) (<https://www.courts.wa.gov/jis/>) search of you and the other party before a hearing to check for other court cases involving either of you. But even if the court does this, it won't review court filings (pleadings) or evidence from other cases. The court must inform you that it's performed this search so that it's part of the record.

Don't assume the court knows about another party's criminal history. The court doesn't review law enforcement records, other than those that have been filed in your case. Law enforcement doesn't automatically share records with the judiciary.

Bottom line: If you want the court to know about something, tell it yourself and provide any supporting documents to the court and the opposing party ahead of time.

What is a “burden of proof?”

It's the requirement that you prove your case by providing enough good evidence (enough proof) to convince the judge that you should get what you've asked the court for. In most civil cases, the burden of proof is **preponderance of the evidence**. This means convincing the judge that your side of the story is more likely true than false.

The person who files a protection order case (the petitioner), or who files a motion or asks the judge to do something in a family law case (also called the moving party) has the burden of proof. **Example:** in a protection order case based on domestic violence, the petitioner must prove it's more likely true than false that the respondent has committed an act of domestic violence against the petitioner.

Are there rules about what evidence I can give to the court?

Yes, there are complicated civil and criminal rules of evidence (https://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=ga&set=ER). Here are some important points to know.

The judge must strictly apply the rules of evidence in family law cases, but protection order cases are considered “special proceedings” where the rules of evidence don't have to be followed as closely. This means the judge in a protection order case can consider more types of evidence. But **not all evidence**

is created equally. Evidence allowed in a protection order case that wouldn't otherwise be allowed won't be as persuasive as other, more reliable kinds of evidence.

Example: You can use hearsay statements (“my daughter said...” or “my sister told me...”) in a protection order case, but this type of evidence isn't considered reliable, so the judge probably won't give it the same weight as more credible evidence, such as the testimony of an eyewitness.

Courts differ about how you should present evidence to them, especially video and audio recordings. Ask the court clerk or facilitator, if there is one (https://www.courts.wa.gov/court_dir/?fa=court_dir.facils), what the court's preference is.

Can I just submit my evidence the day of the hearing or trial?

No. You must file your evidence with the court and have a copy of it served on the other party before the day of the hearing or trial. If you give evidence to the judge to look at for the first time at your hearing, the judge will probably reschedule (continue) the hearing or not consider your evidence at all.

Courts deadlines for submitting evidence and serving the other party may vary by county. Timelines in protection order cases may be more flexible. Ask the court clerk or facilitator, if there is one (https://www.courts.wa.gov/court_dir/?fa=court_dir.facils), what your deadlines are.

What if I don't have any of the documents discussed here?

For a protection order case, that's ok. You still have your own first-hand knowledge of the situation and the facts of your case.

For a family law case, especially one involving property or debt, the judge may require you and the other party to submit additional evidence before the judge can reach a decision on all issues.

Many protection order cases fall into the category of “he said/she said.” Your testimony – either in writing or in front of the court at the hearing or trial – is the

most important piece of evidence you have.

Decisions in “he said/she said” cases often come down to **credibility**, or **which party the judge believes more**. Everything you tell the court, in writing or at a hearing or trial, must be true to the best of your knowledge. If the judge believes you more than the other party, that may be enough to tip the burden of proof in your favor.

2. Protection order cases

Here are suggestions of types of evidence that can help you meet the burden of proof in a protection order case, depending on the facts. Remember: you should submit **only** evidence that’s **directly related to** domestic violence, sexual assault, stalking, or unlawful harassment.

- Medical records
- Child Protective Services (CPS) records
- Incident reports from law enforcement
- Criminal case records, especially the charging documents, the statement of probable cause, no contact orders, or other release conditions
- Past protection order petitions and orders
- **Declarations**

Tips for using declarations in protection order cases: More isn’t necessarily better. Prioritize declarations from people who have firsthand or direct knowledge of the harm that you or the children have experienced.

- **Photos of injuries.** Attach photos to a declaration where you describe who took the photos and when, what injuries the photos show, who caused these injuries, and how they caused them.
- **Screen shots of text messages.** Don’t give the court all your text messages, just those supporting your claim that harm occurred. You might have to show **some** additional messages if the other party asks for context. Your screen shots must show the date and time messages were sent or received and who sent them.

- Journals
- Child Advocacy Center (CAC) (<https://cacwa.org/>) records

What evidence should I *not* submit in a protection order case?

Don't submit declarations of children or minors, especially a child of both parties. Don't put your child in the middle of the case.

Don't submit letters of support instead of declarations. Typed or handwritten statements that aren't signed under the penalty of perjury have no value as evidence.

Don't submit multiple declarations that just talk about your character, the other party's character, or solely issues related to custody. Save that for the family law case.

3. Divorce cases

Here are suggestions of types of evidence that can help you meet the burden of proof in your divorce case, if you're arguing about financial issues.

- Tax returns – last 2 years, personal and business
- Pay stubs – last 6 months

If the other party has non-traditional income or gets paid in cash, you may have to be creative to prove their income. **Examples:** examine bank statements and look for large cash deposits or expenses that don't match up with how much income is claimed. Get declarations from people who have paid the other party for goods or services. Get evidence of what other people in a similar profession typically make in a week, month, or year.

- Other financial documents, such as documents related to retirement accounts, 401K, pension, disability payments, VA benefits, and so on
- Leases – if housing is an issue
- Mortgage and other loan documents
- Bank statements

- Credit card statements
- Valuation of real property (homes), such as home appraisal, brokers opinion of value, tax record
- Proof of childcare costs
- Proof of education and extracurricular costs

4. Family law cases with kids

The records you submit must be **directly related** to the issues you're fighting about in your family law case. For example, records showing that the other party consistently gets the children to school or daycare late don't prove domestic violence. But they could prove that the other party doesn't prioritize the children's education.

- School records - attendance, report cards, and so on
- Medical records – children's check-ups, ER visits, and so on
- Law enforcement and/or CPS records
- Declarations – from friends, family, teachers, or other people who know you and/or who know the other party

Getting a declaration from a teacher can be hard. You might have to subpoena a teacher to give live testimony at hearing or trial instead.

- Therapy records – but note: this may harm or even end the doctor-patient relationship
- Past and present protection order records
- Records from other court cases involving the parties. Even if there's a family law case going on at the same time as a criminal or protection order case, don't assume the court knows about those cases or has seen those records. You must make the record you want in each individual case. If you want the court to consider something, file it yourself.

Page limits: Ask the court clerk if there are local rules (<https://www.courts.wa.gov/courtrules/localcourtrules.cfm>) about how many pages you can submit in support of a motion in family law cases. Declarations always count toward the page limit. Other documents (such as records, reports, photos) may not. Some counties also have page limits in protection order cases.

5. Recordings

Recording the other party rarely helps your case. In fact, it can hurt.

Washington is a 2-party consent state. **Both parties must give permission (must consent) to being recorded.** There are exceptions to this, and in protection order cases you don't have to strictly follow the rules of evidence. But even if a recording falls into one of these exceptions, it still isn't good practice to secretly record your conversations or interactions with an opposing party. These conversations can make everyone involved look bad, not just the other party.

For a record of your conversations with the other party, keep all communication in writing (text or email). Consider a parenting app for communication, such as Our Family Wizard, Talking Parents, or AppClose. You might qualify for a free version if you meet income requirements.

Check with the court clerk or facilitator before you submit any audio recordings.

The 2-party consent rule doesn't apply to video recordings without sound. But before submitting video evidence, think about how your decision to record the situation may appear to the judge, and ask the court clerk about local rules and what the judge prefers.

6. Confidential information

Some confidential documents should be filed separately under a sealed cover sheet. This keeps them out of the public court file. You must still serve them on the other party. **Examples:** paystubs, tax returns, bank statements, benefit statements, medical or treatment records, special education records, confidential evaluations or reports.

If you're afraid for your safety or the children's safety, you can block out information identifying your location on the copies you file with the court and give the other party.

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