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COURT OF APPEALS NO. 84310-9

SUPREME COURT
OF THE STATE OF WASHINGTON

AMINA J. CONDEL,

Respondent,

v.

FRANK GARRETT CONDEL,

Petitioner.

AMENDED PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Garrett Condel petitions this Court to accept review of the Court of Appeals' decisions terminating review designated in Part B.

B. COURT OF APPEALS' DECISIONS

A copy of Division I's Unpublished Opinion filed on July 31, 2003, is in the Appendix at A-5.[1]

A copy of the Order Denying Motion for Reconsideration And Motion to Publish, filed on September 5, 2023, is in the Appendix at A-27.

A copy of the Order Denying Motion to Modify Commissioner's Ruling Awarding Attorney Fees, entered on October 16, 2023, is in the Appendix at A-28.

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[1] Petitioner asks this Court to review his oral argument, available online at: https://www.courts.wa.gov/appellate_trial_courts/ Then go to Court of Appeals, Division I Oral Arguments: TVW Coverage (Regular Docket) #4 on June 14 Condel.

Introduction.

For too long the scourge of domestic violence was ignored by our courts.

In their efforts to redress their prior omissions, the pendulum has now swung too far.

In their single-minded zeal to protect alleged victims of domestic violence and to punish their accused perpetrators, our courts are disregarding constitutionally protected fundamental liberty interests, ignoring legislative mandates, and refusing to adhere to established case law.

In their myopic and misguided belief that they are protecting victims of domestic violence, our courts are destroying families by taking children away from good fathers multiple times every day for reasons which defy common sense.

It is **not** hyperbole to recognize that our judiciary has become biased against fathers

accused of domestic violence.[2]

This case is emblematic.

C. ISSUES PRESENTED FOR REVIEW.

1) Does a court abuse its discretion when it fails/refuses to rule on a motion?

2) When reviewing a denial of a motion for revision, is the appellate court bound by the record created by the decision of the revision court?

3) Is the DVPO court required to apply the "strict scrutiny" test on the record to justify entering a protection order which interferes with a parent's fundamental liberty interest?

4) Is the DVPO court required to consider the "best interests of the child" on the

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[2] A party claiming bias "must support the claim with evidence of the trial court's actual or potential bias." *Bus. Servs. of Am. II, Inc. v. WaferTech LLC*, 159 Wn. App. 591, 600, 245 P.3d 257 (2011), *aff'd*, 174 Wn.2d 304, 274 P.3d 1025 (2012). This Petition identifies that evidence. "The test to determine whether a judge's impartiality might reasonably be questioned is an objective one that 'assumes that a reasonable person knows and understands all the relevant facts.' " *Sherman v. State*, 128 Wn.2d 164, 205-206, 905 P.2d 355 (1995).

record to justify entering a protection order which interferes with a parent's fundamental liberty interest?

5) Did the Court abuse its discretion by awarding the full amount of requested reconstructed attorney fees based on a repealed statute and solely on fee declarations?

D. STATEMENT OF THE CASE.

Amina J. Condel ("Amina") and Frank G. Condel ("Garrett")[3] have four children.

Garrett was with each of them almost every day from the moment each was born.

Garret was the parent who attended and participated in all of their activities.

He is the parent who organized family vacations, took them to Y-camps, and helped with homework. CP 286, 294–296.

Garrett taught his children the value of helping

[3] For ease of consideration, the parties will be referred to by their familiar names. No disrespect is intended.

an elderly infirm neighbor. CP 309, 367–368.

Garrett is the parent who took their autistic daughter to an adaptive horseback riding program every week for more than ten years. CP 315, 370.

Unfortunately, the Condels had a very troubled marriage. CP 249.

In 2017, Amina decided she no longer wanted to be intimate.

Amina and Garret also had fundamental disagreements about parenting.

Amina insisted that their 10 and 13 year old sons sleep with her in the same bed every night since they were born. CP 249–250, 267, 310–311.

Amina insisted their children be home-schooled. Garrett believed their children were falling way behind their peers attending public school and were being deprived of the benefits of socializing with other children.

Amina preferred alternative medicine. She refused to let their children be vaccinated. Garrett preferred traditional medicine.

Amina is a hoarder. CP 259–260, 332–335.

Amina refused counselling or to discuss how she and Garrett might improve their relationship. CP 251, 256.

Garrett was incapable of changing this situation without obtaining a dissolution and separate living arrangements. CP 250, 302.

Statement of Proceedings.

After finally concluding their differences were irreconcilable, Garrett filed a Petition for Dissolution. He delivered those pleadings to Amina the next day (CP 251), together with an email expressing his hope to work together to create a path forward in their children's best interests. CP 321.

After Amina refused to accept service voluntarily, Garrett had to have her formally served. CP 252.

In response, and barely two days before Garrett was scheduled to go to Hawaii on a vacation with his two sons (paid for by his employer), Amina had Garrett served with her Petition for a Domestic Violence Protection Order. CP 1–9; CP 252.

In her declaration in support of her Petition, Amina alleged myriad claims of domestic violence. CP 10–39, 75–229.

Yet out of Amina's litany of accusations, Commissioner Pro Tem Jessica Martin found only two isolated, *de minimus* incidents she concluded constituted domestic violence. Both had occurred nearly three years earlier. 05/04/2022 RP 9–11.

Neither constituted domestic violence as a matter of law.

On revision, the Honorable Hillary Madsen affirmed the Commissioner's ruling. A-1–A-4.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.

This Court should accept review under each of the tests established in RAP 13.4(b) for the following reasons:

1. A Court Abuses Its Discretion When It Ignores Motions.

In response to Amina's DVPO Petition, Garrett moved to refer those accusations which the court found "reasonable cause to believe that a child of the parties has suffered abuse or neglect" to CPS for investigation, pursuant to RCW 26.12.170 (A-29), and to defer any findings of domestic violence pending that investigation. CP 230–247, 253.

Both parties moved the Court to do a risk assessment. CP 231–234; 4/20/2022 RP 33, 35.

Commissioner Martin disregarded these

motions altogether. The failure/refusal of the court to exercise discretion was an abuse of discretion.[4]

But according to Division I, by "granting Amina's petition, the court effectively denied Garrett's requests for referrals" and "[T]hat denial was not an abuse of discretion". A-10.

That was error.

It is the responsibility of the appellate court in its supervisory role to ensure that there is an adequate record[5] to enable it to meaningful review the lower court's exercise of discretion.

The Court Commissioner's failure/refusal to even acknowledge these motions is indicative of how accused fathers are typically steamrolled in DVPO

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[4] *StarKist Company v. State*, 25 Wn. App. 2d 83, 100, 522 P.3d 594 (2023)("failure to explain rationale"); *Marriage of Mishko and Kehr*, 23 Wn .App. 2d 571, 578, 519 P.3d 240 (2022).

[5] Compare, *Mahler v. Szucs*, 135 Wn.2d 398, 435, 957 P.2d 632 (En Banc 1998).

proceedings.

2. Division I Created A False Record Based On Rejected Accusations and Fabrications.

When, as here, "the superior court makes a decision on revision, 'the appeal is from the superior court's decision, not the commissioner's.' "[6]

Even so, a revision denial constitutes an adoption of the commissioner's decision.[7]

Thus, the decision to be reviewed here was Judge Madsen's (A-1–A-4) based upon "the records of the case, and the findings of fact and conclusions of law" entered by Commissioner Martin.[8]

Both lower courts found and concluded that out of Amina's myriad accusations only the same

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[6] *State v. Ramer*, 151 Wn.2d 106, 113, 86 P.3d 132 (2004).

[7] *Maldonado v. Maldonado*, 197 Wn. App. 779, 789, 391 P.3d 546 (2017).

[8] RCW 2.24.050.

two incidents constituted domestic violence.[9]

When the lower court fails to make an express finding on a material fact, the appellate court will deem that fact to have been found against the party having the burden of proof.[10]

The lower courts thus denied Amina's claims that her other accusations constituted domestic violence.

> Mere accusations, without proof, are not sufficient to invoke the restrictions under the statute. [RCW 26.09.191, A-39–A-45].[11]

Amina did not appeal this (lack of) finding. It is

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[9] 05/04/2022 RP 9–11; A-2. In Section 2 of her Order A-3, **not** her findings, Judge Madsen set forth Garrett's arguments to some of Amina's accusations, but did **not** find that her accusations constituted acts of "domestic violence".

[10] *Golberg v. Sanglier*, 96 Wn.2d 874, 880, 639 P.2d 1347 (1982); *Omni Group, Inc. v. Seattle-First Nat. Bank*, 32 Wn. App. 22, 28, 645 P.2d 727 (1982).

[11] *Caven v. Caven*, 136 Wn.2d 800, 809, 966 P.2d 1247 (En Banc 1998).

thus a verity on appeal.[12]

When the court below has weighed the evidence, the appellate court's review is limited to determining whether substantial evidence supports the findings and, if so, whether those findings in turn support the lower court's conclusions of law and judgment.[13]

It is **not** permitted to make its own findings.[14]

It must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence.[15]

Yet, throughout its opinion, Division I made

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[12] *Postema v. Pollution Control Hearings Bd.*, 142 Wn.2d 68, 100, 11 P.3d 726 (En Banc 2000).

[13] *Ridgeview Properties v. Starbuck*, 96 Wn.2d 716, 719, 638 P.2d 1231 (En Banc 1982).

[14] *Matter of Estate of Langeland v. Drown*, 195 Wn. App. 74, 82, 380 P.3d 573 (2016).

[15] *Prostov v. State, Dept. of Licensing*, 186 Wn. App. 795, 820, 349 P.3d 874 (2015).

findings based upon Amina's rejected accusations[16], and fabricated what the courts did below.

For example, Division I's assertion (A-19):

> But the court's finding was not confined to the July 17 and December 15 incidents. The court clarified that those incidents were "the explicit one[s] the Court discussed during it ruling" and did not state that those were the only incidents supporting its findings",

deliberately misconstrues the record, and constitutes a denial of fundamental due process.[17]

Treating rejected accusations as findings of domestic violence usurped the function of the lower courts and exceeded its authority on review.

It also constitutes a denial of "fundamental

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[16] See e.g., Opinion pp. 1 "After enduring years of abuse...", 2, 3, 10, 11, 11 fn.7, 14–16.

[17] *Mathews v. Eldridge,* 424 U.S. 319, 348, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976); *Nguyen v. State, Department of Health Medical Quality Assurance Commission,* 144 Wn.2d 516, 524–534, 29 P.3d 689 (En Banc 2001).

fairness" because it saddles fathers with unidentified claims they have successfully defended as findings against them, thereby resulting in an erroneous deprivation of their constitutional rights.[18]

"Fundamental fairness" requires judges to be impartial arbiters and to maintain the appearance of fairness. CJC Rules 1.2, 2.2, 2.3.

Division I was not impartial.

3. The Courts Below Abused Their Discretion By Failing/Refusing To Apply The Strict Scrutiny Test.

In *Parentage of C.A.M.A.*, 154 Wn. 2d 52, 57, 109 P.3d 405 (En Banc 2005), this Court held:

> We held in *Smith*[19] that "parents have a fundamental right to autonomy in child-rearing decisions," *In re Smith,* 137

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[18] *Mathews, supra*; *Prostov*, 186 Wn. App. at 810–811.

[19] *In re Custody of Smith* 137 Wn.2d 1, 969 P.2d 21 (1998).

> Wash.2d at 13, 969 P.2d 21, and this "liberty" interest is protected as a matter of substantive due process under the Fourteenth Amendment. *Id.* at 15, 969 P.2d 21. We held state interference with this interest "is justified **only** if the state can show that it has a compelling interest **and** such interference is narrowly drawn to meet only the compelling state interest involved." *Id.* This is the "strict scrutiny" test.

The courts below did not engage in the "strict scrutiny" required by this two-part test to determine whether entering a protection order interfering with Garrett's fundamental right and liberty interest to parent was justified[20], and thus abused their discretion.[21]

Amina argued that the court was not "required

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[20] Given the nature and importance of the interest subject to the potentially erroneous deprivation, the required standard of proof should be greater than a mere preponderance. *Addington v. Texas,* 441 U.S. 418, 423, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979); *Nguyen, supra.*

[21] *Mayer v. Sto Industries, Inc.,* 156 Wn.2d 677, 684, 132 P.3d 115 (En Banc 2006).

to conduct a "strict scrutiny" test". Resp. Brief, pp. 55–56. According to Division I (A-21):

> Moreover, there was no error in the court not explicitly considering this right; it had no obligation to rehash settled case law when it granted the DVPO.

But surely, when the state seeks to justify interfering with this most fundamental of our constitutionally protected liberty interests, making a record on articulable grounds of how and why the court exercised its discretion in the manner it did, is no less necessary than the record required when the court makes an award of reasonable attorney fees.[22]

It is also the only way to insure that the strict scrutiny test is actually applied.

a. The Two Incidents of Domestic Violence Found By The Courts Below Did Not Create A *Compelling* State Interest.

Under the strict scrutiny test, the protection

[22] *Mahler*, 135 Wn.2d at 433–435.

order court must first determine whether there is a *compelling* state interest to justify state interference —not just any interest—but a *compelling* one.

Contrary to the holding by Division I, A-24, neither *Smith*, 137 Wn.2d at 16, nor *Marriage of Stewart*, 133 Wn. App. 545, 555, 137 P.3d 25 (2006), hold that "[T]his test is satisfied" whenever "a child has been harmed or that there is a credible threat of harm to the child".

This was error.

Not every "harm" or "threat of harm to the child" creates a *compelling* state interest.

On July 17, 2019, when Amina angrily and abruptly stuck her hand in Garrett's face in a "stop" motion, "with an apparent purpose to strike and sufficiently near to enable the purpose to be carried

into effect" she assaulted him, as a matter of law.[23]

Garrett instinctively swatted her hand out of his face. The use of such force is not unlawful when used by a person who believes he or she is about to be injured, as Garrett did here, as a matter of law.[24]

Contrary to Division I's fabrication (A-19–A-20), the DVPO court did **not** make a "fact finding" of self-defense, merely by finding the mother more credible. Credibility was not at issue. Self-defense was not addressed by either court.

Similarly, Amina's accusation that on December 15, 2019, Garrett grabbed J.S. by the neck causing only transient pain and minor temporary marks, did not constitute domestic

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[23] *Brower v. Ackerley*, 88 Wn. App. 879, 43 P.2d 1141 (1997).

[24] RCW 9A.16.020(3).

violence, as a matter of law. [25]

Even though it appears that J.S. was grabbed by the back of his neck, Commissioner Martin concluded that Garrett's alleged conduct was not protected by RCW 9A.16.100, based on her speculation, that "[g]rabbing a child's neck would interfere with a child's breathing and is explicitly stated within the statute as per se unreasonable." [26]

But there was **no** allegation—much less, evidence—to support her speculation that J.S.'s breathing had been impacted. CP 25.

On revision, Judge Madsen did not adopt Commissioner Martin's speculation, but upheld this domestic violence claim based on her conclusion

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[25] RCW 9A.16.100, A-30; WAC 110-30-0030, A-31–32.

[26] 5/4/2022 RP 10–11.

that "it was not reasonable physical discipline".[27]

Division I's ruling that the "court did not err in concluding that Garrett's actions were *likely* to interfere with J.S.'s breathing, and therefore, not reasonable physical discipline under the statute" (A-17) ignores the undisputed evidence, misstates WAC 110-30-0030 (A-31-A-32), and what the lower courts actually ruled.

The courts thus abused their discretion by substituting their own subjective beliefs as to what constituted "reasonable physical discipline", instead of adhering to the required "statutory standards".[28]

Also, according to Division I (A-17):

> In determining whether physical discipline is reasonable, the fact finder should consider the age, size, and

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[27] CP 507–508; A-2.

[28] *In re Dependency of H.S.*, 188 Wn. App. 654, 665, 356 P.3d 202 (2015); *Ugolini v. Ugolini*, 11 Wn. App. 2d 443, 449, 453 P.3d 1027 (2019).

> condition of the child, the location of the injury, the nature of the misconduct, and the child's developmental level. RCW 9A.16.100; WAC 110-30-0030.

But the fact finder did not do so here.

In any event, since neither of these two incidents constituted domestic violence as a matter of law, neither created a *compelling* state interest.

In addition, even if these two incidents which occurred three years before the parties even separated could technically be defined as "domestic violence", they were, at most, "isolated *de minimus* incidents", and thus should have been excluded from the court's determination of whether there was a "history of domestic violence".[29]

This limitation is consistent with the requirement that the State's interest must be

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[29] *In re Marriage of C.M.C.*, 87 Wn. App. 84, 88, 940 P.2d 669 (1997).

compelling. Without this limitation the protection order statute does not pass constitutional muster.

Yet, according to Division I (A-21), without any supporting legal authority, the Parenting Act of 1987 "was later amended and is not at issue in the present case".

But this Court has made clear that it does "not overrule ... binding precedent *sub silentio*,"[30] and that its decisions are binding on all lower courts. [31]

Relying upon Amina's rejected accusations, Division I held "the incidents *alleged* here are certainly not de minimus or isolated." A-21.

But regardless of what had been *alleged*, the two incidents which the courts below actually found

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[30] *State v. Studd*, 137 Wn.2d 533, 548, 973 P.2d 1049 (1999).

[31] *1000 Va. Ltd. P'ship v. Vertecs Corp.*, 158 Wn.2d 566, 578, 590, 146 P.3d 423 (2006); *Peterson v. Dep't of Lab. & Indus.*, 17 Wn. App. 2d 208, 222, 485 P.3 388 (2021).

and concluded constituted domestic violence are not domestic violence at all, or are at most, *de minimus* or isolated incidents, and thus did **not** create a *compelling* state interest.

Thus, the Commissioner's finding (merely by checking the box on the DVPO form) that Garrett posed a "credible threat" to his children is not supported by substantial evidence.[32]

If even this first prong of the strict scrutiny test had been properly considered by the courts below, **no** protection order would have been entered.

b. Such Interference Was Not Narrowly Drawn To Meet Only The Compelling State Interest Involved.

Should a father who is currently beating his wife and children be treated the same as a father who instinctively swatted his angry wife's hand out

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[32] Compare, *In Re Parentage of T.W.J.*, 193 Wn. App. 1, 367 P.3d 607 (2016).

of his face, or who grabbed his son by the back of his neck, three years earlier?

Yet, the remedies are identical in every case: namely, (1) a protection order for (at least) one year; (2) supervised residential time—*professionally* supervised if the mother will not agree to a lay supervisor, regardless of cost or necessity; and (3) compelled participation in state-certified domestic violence treatment programs lasting a year or longer.

Just because a DVPO court has the power to impose these remedies does not mean it should, or that they are constitutional as applied in every instance.

Limitations on fundamental rights are constitutional only if they are "reasonably necessary

to accomplish the essential needs of the state."[33]

If this legal principle had been followed by the courts below, **none** of these "remedies" would have been ordered.

The Petitioner submits that this "one size fits all" approach does not meet constitutional muster as applied, because **no** discretion is *permitted* to be exercised once domestic violence is found.

i. Always Entering A Protection Order For At Least One Year Is Not Narrowly Drawn.

Thus, for example, in *Juarez v. Juarez*, 195 Wn. App. 880, 886–892, 382 P.3d 13 (2016), the majority held that notwithstanding the statutory language "not to exceed one year"[34], the lower court abused its discretion by entering a protection order

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[33] *State v. Riles*, 135 Wn.2d 326, 350, 957 P.2d 655 (1998).

[34] RCW 26.50.060(2), A-34.

for less than one year.

Since the facts in every case are different, a year-long protection order is **not** always "narrowly drawn to meet only the compelling state interest involved", nor "reasonably necessary to accomplish the essential needs of the state" in every case.

The majority's opinion also violates RCW 26.09.003 (A-38).

ii. Ordering Participation In State-Certified Domestic Violence Treatment Programs Lasting A Year Or Longer Which Lack Evidence Of Efficacy Is Unconstitutional.

There is **no** evidence that state-certified domestic violence treatment programs have any efficacy—i.e. no evidence that they reduce recidivism of domestic violence offenders, or that they protect victims of domestic violence.[35]

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[35] CP 341–360; A-49–A-68.

Criticisms of this study and the fact that WAC 388-60B-0400 now requires a comprehensive behavioral screening and assessment to determine what level of treatment, if any [36], is indicated, as Division I counters (A-23–A-24), provide **no** evidence whatsoever that these "treatment" programs actually have any efficacy—whatever the level of treatment.

Ineffective treatment programs are not "reasonably necessary to accomplish the essential needs of the state".

Ordering fathers accused of domestic violence to give up their liberty and money to complete weekly domestic violence treatment programs, which lack evidence of efficacy, is not treatment.

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[36] The assessment is inherently corrupt when the person doing the assessment is the same individual or group of individuals being paid to provide the "treatment".

It's punishment.

Restricting the father's residential time with his child, while their future relationship hangs in the balance for a year a longer, during which he must "successfully" complete these expensive and time-consuming snake-oil programs, makes this a punishment most cruel—particularly for children.

Such restrictions are thus both unconstitutional and unconscionable.

Families are destroyed.

But victims are not better protected.

iii. Ordering Supervised Residential Time—*Professionally* Supervised If Requested By The Wife—Is Not Always Narrowly Drawn.

Absent evidence that supervised residential time, much less professionally supervised

residential time[37], is necessary to protect the child from imminent harm or an actual risk of imminent harm, ordering supervised residential time is not "narrowly drawn to meet only the compelling state interest involved", and should not be ordered.

The parenting relationship between the father and his child is severely damaged as a result of this court-ordered estrangement—often irreparably.

Moreover, what happens if a father is unable to pay for professionally supervised residential time or "treatment" classes which lack efficacy?

Then those fathers and their children don't get to see each other, except for one zoom call each week.

Is that always in the child's best interests?

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[37] Generally, the protection order court leaves it up to the whim of the alleged "victim" to determine whether the father's residential time will be supervised by a lay person or professionally. What will a vindictive "victim" choose?

4. The Courts Below Failed/Refused To Consider The Best Interests of The Children.

The courts below failed/refused to consider "consider the best interests of the children and the other factors set forth in the Parenting Act", before entering the protection order here[38], and thus abused their discretion.

While Amina concedes that the "court must consider the best interests of the children under RCW 26.09.002", she contends "that the court must also consider the other provisions in RCW 26.09", Resp. Brief, p. 56, without naming any.

Division I's ruling that the lower courts properly considered the "best interests" of the children merely by granting the DVPO (A-24), is facile and not supported by the record.

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[38] *Stewart,* 133 Wn. App. at 552–553; See also, RCW 26.09.002, A-37; RCW 26.09.003, A-38; and RCW 26.09.187(3)(a), A-47.

At a minimum, a determination of the child's best interests must balance the harm to the child caused by the entry of a protection order against the benefit of entering one.

It requires an examination of the whole family dynamic. See RCW 26.09.187(3)(a).

> While the criteria for establishing the best interests of the child are not capable of specification, each case being largely dependent upon its own facts and circumstances, the proof necessary in order to deprive a person of his or her parental rights must be clear, cogent and convincing.[39]

If entering a protection order is not in the child's best interests, then the state's interest is not *compelling.*

If there is a bona fide dispute about the accusations of domestic violence, the due process protections found in RCW 26.12.170, or a risk

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[39] *Smith*, 137 Wn.2d at 39 (quoting *In re Aschauer's Welfare*, 93 Wn.2d 689, 695, 611 P.2d 1245 (1980)).

assessment by FCS or CPS, should be utilized, when requested, rather than disregarded.

Even where there is an actual history of acts of domestic violence, unlike this case, and RCW 26.09.191(2)(a) requires that residential time be restricted, the court's findings must explain why a protection order is in the children's best interests[40], including its consideration of "the other factors set forth in the Parenting Act", and "its rationale for exercising its discretion" in whatever manner it does[41], in fashioning those restrictions, sufficiently to enable meaningful review.

It is also the only way to insure that the lower courts actually consider the best interests of the children and these "other factors".

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[40] See *In re Adoption of A.W.A.*, 198 Wn. App. 918, 924–925, 397 P.3d 150 (2017).

[41] *StarKist Company*, 25 Wn. App. 2d at 100.

As this case illustrates, even the slightest whiff of domestic violence trumps all other concerns.

It caused the courts here to overlook the fact that Garrett had been an outstanding father for nearly twenty years and to completely disregard the detrimental impact of the mother's behaviors on their children.[42] 05/04/2022 RP 7, A-24.

If the best interests of the children had been considered here, **no** protection order would have been entered.

Similarly, always ordering that the father's residential time be supervised—much less, professionally supervised—is not always in the children's best interests, and was not so here.

It can never be in a child's best interests to hold his or her future relationship with their father hostage to their father completing domestic violence

[42] Please read, CP 249–251, 295–296, 366–371.

"treatment" programs which lack evidence of efficacy.

Ineffective "treatment" programs do **not** "protect the child from physical, mental or emotional harm". RCW 26.09.002.

If, as Judge Madsen ruled, issues regarding the residential schedule would be determined in the dissolution proceeding (A-4), the two proceedings should be consolidated, not merely linked.

In such a case, findings by the DVPO court should be regarded as "preliminary", rather than stigmatizing the father with a final DVPO, and its mandatory 26.09.191 restrictions, which he is then unable to challenge under the doctrines of collateral estoppel and res judicata.

"The existing pattern of interaction between a parent and child [should be] altered *only* to the

extent ... required to protect the child from physical, mental, or emotional harm," RCW 26.09.002.

The bases for any restrictions should be reviewable by the dissolution court.

5. Division I Carved Out Special Exceptions For Awarding Attorney Fees To Domestic Violence Attorneys.

RAP 18.1(a) grants a party the right to recover reasonable attorney fees "if applicable law" grants that right.

Amina first requested such an award based on RCW 26.50.060(1)(g) when she filed her Response Brief on March 6, 2023.

But RCW 26.50.060(1)(g) had been repealed effective July 1, 2022, and thus was no longer the "applicable law".

Nonetheless, according to Division I (A-26):

> When Amina filed her petition, former Chapter 26.50 RCW governed civil DVPO proceedings. That chapter still governs this proceeding.

Division I's holding conflicts with *Cazzanigi v. General Elec. Credit Corp.*, 132 Wn.2d 433, 441, 938 P.2d 819 (En Banc 1997).

Proving its bias beyond any reasonable doubt, Division I also "simply accept[ed] unquestioningly [the] fee affidavits from counsel" of reconstructed hours, without requiring any corroborative evidence, in direct conflict with *Mahler, supra*, and *Johnson v. State, Dept. of Transp.*, 177 Wn. App. 684, 699, 313 P.2d 1197 (2013).

Domestic violence attorneys should not be granted special exceptions to rules applicable to all other attorneys.

CONCLUSION

Separating children from good fathers for claims that do not constitute domestic violence, as a

matter of law, or at most, constitute isolated, *de minimus* incidents which could be technically defined as domestic violence, defy common sense and violate fathers' constitutionally protected liberty interests to parent.

We can and must do better.

Domestic violence proceedings involving children do not occur in a legal vacuum where the only issue is whether there has ever been a colorable claim of "domestic violence".

To justify the state's interference with a parent's fundamental liberty interest, the court must explain on the record why the state's interest is *compelling*, how its interference is "narrowly drawn to meet only the *compelling* state interest involved", and why that interference is in the child's "best interests".

It is the responsibility of the appellate court in its supervisory role to ensure "an adequate record"[43], to enable it to meaningful review whether the lower court's exercise of discretion was based on a careful and thoughtful consideration of the issues.

If a *compelling* state interest is found, the court must have the discretion "to tailor individualized resolutions", as the legislature has mandated, RCW 26.09.003, which are "narrowly drawn to meet only the *compelling* state interest involved", and are in the child's "best interests".

Entering protection orders for a year and requiring supervised residential time do not always meet these requirements.

Ordering fathers to complete "treatment" programs lacking evidence of efficacy never do.

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[43] *Mahler*, 135 Wn.2d at 435.

No appellate court should be permitted to fabricate the record, and disregard legal precedents and legislative mandates to drive pre-ordained outcomes, as Division I did here.

This Court should accept review.

Respectfully submitted this 14th day of November, 2023.

I certify that this Petition for Review contains 4984 words in compliance with RAP 18.17(c)(10).

/s/ C. Nelson Berry
C. Nelson Berry
WSBA #8851
Attorney for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

CONDEL, AMINA J., Petitioner, v. CONDEL, FRANK G., Respondent.	No. 22-2-03450-5 SEA

THIS MATTER came before the Court on Respondent Frank Condel's motion to revise the Order for Protection entered by Pro Tem Commissioner Jessica Martin on May 4, 2022.

The Court heard the matter without oral argument. First, the Court listened to the audio recording of the hearing on May 4, 2022 (oral ruling). Second, the Court listened to the audio recording of the hearing on April 20, 2022 (contested hearing). Finally, the Court considered Respondent's Motion for Revision; Order for Protection; and the materials submitted to Commissioner Martin, including declarations and exhibits, and the records of the case.

Based on the audio recordings of the hearings, the documents before Commissioner Martin, and the records in the case, the Court finds:

1. Petitioner and Respondent Amina Condel are married and share four children.
2. On December 29, 2021, Respondent filed for divorce. *See* King County Case No., 21-3-06441-8 SEA. Respondent argues he was obligated to proceed with in-person service because Petitioner refused to acknowledge service, and in-person service was completed on or about February 17, 2022.
3. On March 9, 2022, Petitioner filed a Response in the family law matter. It appears Petitioner moved with the children into a domestic violence shelter on the same day.
4. On March 10, 2022, Petitioner filed a Petition for Order for Protection.
5. On April 12, 2022, the family law case and domestic violence proceeding were linked.
6. On April 20, 2022, a full hearing on the domestic violence petition was held.
7. On May 4, 2022, Commissioner Martin found Respondent engaged in acts of domestic violence towards Petitioner and entered an Order for Protection. During her oral ruling, Commissioner Martin highlighted (1) an incident on July 17, 2019 when Petitioner's eye was hit and her head hit a door frame, and (2) an incident on December 15, 2019 when Respondent left visible red marks on one of the children. Commissioner Martin noted Respondent denies causing physical harm to the children, or in the alternative, Respondent argues parents have the right to discipline children. Commissioner Martin concluded Respondent cause harm to one of the children, and it was not reasonable physical discipline. Commissioner Martin also noted established case law holding a child's exposure to domestic violence is domestic violence and the children were

present for many of the incidents alleged by Petitioner to have occured. *Rodriguez v. Zavala*, 188 Wash. 2d 586, 398 P.3d 1071 (2017).

8. On May 18, 2022, Commissioner Martin denied Respondent's Motion for Reconsideration.
9. On May 23, 2022, Respondent filed a Motion for Revision. The motion was reassigned from Judge Holloway to the undersigned Court on June 16, 2022.
10. It appears Judge Holloway is still the assigned judge in the family law matter.

Based upon the above findings, It Is Ordered:

1. Respondent properly and timely moved to revise Commissioner Martin's order.
2. Respondent argues Petitioner hit herself in the face and fell backwards when Respondent "instinctively" "swatted" Petitioner's hand because her hand was in his face; a chair fell over and struck Petitioner's foot by accident because of the position of Respondent's flipflop under the chair when he stood up quickly; Respondent tripped and fell over a toy when he shut the garage door that Petitioner was holding open; and Petitioner is "paranoid" and her claims are "hyperbolic" and "unwarranted."
3. Like Commissioner Martin, the undersigned Court concludes the burden is on Petitioner to prove by a preponderance of the evidence Respondent perpetrated acts of domestic violence as alleged; and Petitioner has met her burden based on this record.
4. It is unclear from the audio recording of the April 20th hearing if Respondent waived the viewing of the video exhibits by agreeing to go forward; however, it is illegal to record a communication without consent from all parties involved. RCW 9.73.030. In *Matter of K.R.*, Division II of the Court of Appeals recently considered a family law case where the mother made several recordings of the father punishing a child. *Matter*

of K.R., 19 Wash.App.2d 1059 (2021). The appellate court concluded the Privacy Act applied to the recordings, and the recordings were admissible because the father threatened to cause physical harm to the child. The video exhibits offered in this matter are distinguishable from the recordings in *Matter of K.R.* and should not be considered.

5. The Order for Protection makes clear the residential schedule for the children will be determined in the family law case, which is appropriate. Additional concerns raised such as homeschooling, vaccines, medical or homeopathic healthcare, mold, and ants in the family home should be resolved through the family law case.

6. Respondent's Motion for Revision is DENIED.

Dated this 18th day of July, 2022.

JUDGE HILLARY MADSEN

FILED
7/31/2023
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

AMINA J. CONDEL, Respondent, v. FRANK GARRETT CONDEL, Appellant.	No. 84310-9-I DIVISION ONE UNPUBLISHED OPINION

SMITH, C.J. — Amina and Frank Garrett Condel[1] married in 1999 and have four children together. After enduring years of abuse, Amina petitioned for a domestic violence protection order (DVPO) for herself and their children. After a contested hearing, a court commissioner granted her petition, entered a DVPO, and ordered Garrett to surrender any weapons and attend a domestic violence treatment program. The commissioner denied Garrett's motion for reconsideration and a judge denied his motion for revision. On appeal, Garrett raises a number of challenges, both procedural and substantive. Finding no merit in his contentions, we affirm.

FACTS

Amina and Garrett Condel married in 1999 and have four children together: B.C., G.C., J.C., and L.C. Three of the children are minors and L.C. is an adult with autism, dependent on her parents for care.

[1] For clarity, we refer to the parties by their preferred first names—in Mr. Condel's case, his middle name—because they share a last name.

Soon after the parties married, Garrett became physically and psychologically abusive toward Amina. His behavior escalated over the years to eventually involve the parties' children. Garrett's aggressive behavior caused Amina to "live in extreme fear for [her] life and [the] children's lives." Amina's situation only worsened with the onset of the COVID-19[2] pandemic. Forced to remain at home with Garrett, his controlling and abusive behavior became unbearable.

In March 2022, Amina petitioned for a domestic violence protection order (DVPO) for herself and the children. Amina's declaration in support of the DVPO detailed years of abuse directed at her and the children. She stated that Garrett first became aggressive during their first year of marriage and that when Garrett got upset, "he would often wrap his arms around [Amina] and physically hold [her] against her will . . . so that [she] could not move or escape." She described that over the years, Garrett habitually abused her, calling her crude names and being generally demeaning. She also alleged that Garrett used "threatening body language to intimidate [her]," including charging after her and putting his face aggressively close to hers.

On July 17, 2019, in what Amina described as "[o]ne of the scariest incidents," Garrett "slapped [her] hand with so much force that his finger jabbed into [Amina's] eye and [her] head slammed backwards and struck the frame of [her] bedroom door." Amina experienced eye pain "non-stop" for a month and

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[2] COVID-19 is the World Health Organization's official name for "coronavirus disease 2019," a severe, highly contagious respiratory illness that quickly spread throughout the world after being discovered in December 2019.

received medical care for her eye and head injuries.

Amina recounted several incidents of violence against her witnessed by the children. For example, in November 2019, when Amina asked G.C. to leave the garage to go to bed, Garrett "came charging toward the door and slammed the door on [Amina's] right arm and side." And in March 2020, during an argument about finances, Garrett suddenly "sprung up from his chair and the chair slammed down hard on [Amina's] foot." Amina cried out in pain and the children "ran to [her] to see if [she] was ok, and [Amina] cried for several minutes."

Amina's declaration also contained several examples of violence directed towards the parties' children. For instance, in March 2018, Garrett "got physically aggressive with GC by slapping his leg." A few days later, "Garrett became physically aggressive with LC by slapping, grabbing and being rough with her and scaring her to the point where she was shaking and crying." In total, Amina's declaration contained more than 20 accounts of violence towards her or the children.

Garrett denied committing any acts of violence towards Amina or the children and claimed that "notwithstanding her hyperbolic melodrama, Amina has never been frightened of [him] in any way whatsoever." Garrett noted that while he had been raised "in a loving family with no exposure to domestic violence," Amina was "raised by a single mother" and "had been the victim of multiple childhood traumatic events." Garrett stated that he believed "these unfortunate childhood experiences have had a detrimental impact on [Amina's] personality,

her perceptions, and her views about parenting." In support of his position, Garrett provided excerpts from his daily journal, which he said he "felt compelled to start keeping . . . to protect [himself] from [Amina's] fabrications."

At the DVPO hearing before a court commissioner, the court concluded that Amina met her burden of proving Garrett had perpetrated acts of domestic violence. The court specially highlighted the July 17 eye injury incident as supporting a DVPO's entry and noted that it found Amina's version of events to be more credible than Garrett's. The court found that the children were present for many of the incidents alleged in Amina's petition, including the one on July 17, and that this exposure constituted domestic violence against the children. The court noted that an incident on December 15, 2019—in which Garrett was alleged to have grabbed J.C. around the neck—warranted including the children in the DVPO. The court concluded that Garrett presented a credible threat to Amina and granted her petition. It also ordered Garrett to surrender any weapons in his possession and attend a domestic violence treatment program. Finally, the court stated that the DVPO was subject to any visitation rights granted in the parties' ongoing dissolution proceeding.

Garrett moved for reconsideration, which the commissioner denied. He then moved for revision, which a superior court judge denied.

ANALYSIS

Standard of Review

A court commissioner's decision is subject to revision by the superior court. RCW 2.24.050. On a motion to revise, the superior court reviews the

commissioner's findings of fact and conclusions of law de novo based on the evidence and issues presented to the commissioner. In re Marriage of Moody, 137 Wn.2d 979, 992-93, 976 P.2d 1240 (1999). "A revision denial constitutes an adoption of the commissioner's decision, and the court is not required to enter separate findings and conclusions." Maldonado v. Maldonado, 197 Wn. App. 779, 789, 391 P.3d 546 (2017). On appeal, we review the superior court's ruling, not that of the commissioner. Maldonado, 197 Wn. App. at 789, 791.

We review the superior court's decision to grant a domestic violence protection order for an abuse of discretion. In re Marriage of Stewart, 133 Wn. App. 545, 550, 137 P.3d 25 (2006). The court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. In re Marriage of Chandola, 180 Wn.2d 632, 642, 327 P.3d 644 (2014). Where, as here, the court weighed contradictory evidence, "[w]e review the superior court's findings for substantial evidence," and defer to the trier of fact on questions of witness credibility, conflicting testimony, and persuasiveness of the evidence. In re Vulnerable Adult Petition for Knight, 178 Wn. App. 929, 936-37, 317 P.3d 1068 (2014). Evidence is "substantial" when it is sufficient to persuade a fair-minded person of the truth of the matter asserted. In re Marriage of Black, 188 Wn.2d 114, 127, 392 P.3d 1041 (2017).

Motions to Refer

Garrett argues the court abused its discretion by refusing to rule on his motions to file a report with law enforcement or the Department of Social and Health Services (DSHS) or to refer the case to Family Court Services (FCS). We

disagree. The court effectively denied Garrett's motions by granting the DVPO petition.

RCW 26.12.170 provides that the court "may" file a report with law enforcement or DSHS if it has reasonable cause to believe that a child of the parties has suffered abuse or neglect. It also provides that the court "may" order or recommend Family Court Services. RCW 26.12.170. The statute grants the court the ability to make a referral. Therefore, we review the court's determination for an abuse of discretion. See In re Guardianship of Johnson, 112 Wn. App. 384, 387-88, 48 P.3d 1029 (2002).

Here, the court did not file a report with law enforcement or DSHS and did not refer the parties to FCS for an assessment. Instead, after finding that Garrett committed domestic violence against both Amina and their children, the court granted Amina's petition for a DVPO. By granting Amina's petition, the court effectively denied Garrett's requests for referrals. That denial was not an abuse of discretion.[3]

Garrett's Video Exhibits

Garrett asserts that the court erred by refusing to admit or consider video exhibits that he wished to submit as evidence. However, because the court was unable to play them, Garrett chose to proceed with the hearing without the exhibits rather than postponing the hearing. We conclude that in doing so, he

[3] Garrett also claims that both parties moved the court to refer them to FCS. But Amina only requested the court refer the parties to FCS if it was not inclined to grant her a protection order.

waived this issue.

Under RAP 2.5(a), we may refuse to hear any claim of error not raised before the trial court. Waiver requires both knowledge and intent; it is the intentional and voluntary relinquishment of a known right, or conduct that infers relinquishment of such right. Bowman v. Webster, 44 Wn.2d 667, 669, 269 P.2d 960 (1954). "It is a voluntary act which implies a choice, by the party, to dispense with something of value or to forego some advantage." Bowman, 44 Wn.2d at 669. The ability of an attorney to waive a right on their client's behalf depends on the nature of the right, but statutory and procedural rights are typically waivable without the client's express permission on the record. See, e.g., State v. Israel, 19 Wn. App. 773, 779, 577 P.2d 631 (1978) (attorney's waiver of statutory right to examination by two experts in competency hearing); In re Adoption of M.S.M.-P., 184 Wn.2d 496, 500, 358 P.3d 1163 (2015) (attorney's waiver of constitutional right to public proceedings).

At the April 20 hearing, the court informed the parties that it had not been able to review the video exhibits submitted by Garrett's counsel. The court noted that it did not have access to the exhibits and that it was unsure how to view the exhibits—it suggested that counsel might need to appear and play the exhibits in open court. The court stated that the parties could proceed that day without the exhibits or the hearing could be continued to allow the court time to view the exhibits.[4] Garrett's counsel opted to proceed: "I think my client would prefer to go

[4] The court offered to grant a shorter than usual continuance: "[I]f it's important that the Court review this prior to . . . a hearing or . . . issuing a

forward." The court then reiterated that it "ha[d] not reviewed any video evidence that was submitted, and that [the video exhibits were] not going to be considered as part of the Court's decision." Garrett's counsel did not object further.

In response to Amina's waiver argument, Garrett urges this court to look to the superior court's ruling on his motion for revision, in which it concluded that it was "unclear from the audio recording of the April 20th hearing" if Garrett waived viewing of the video exhibits by agreeing to go forward. The superior court also determined that, regardless of waiver, it could not review the exhibits because Amina did not consent to being recorded and "it is illegal to record a communication without consent from all parties involved." See RCW 9.73.030(1)(b). Garrett argues that exceptions to the Washington Privacy Act, chapter 9.73 RCW, apply and that the superior court erred in not admitting his exhibits.

Because we conclude that Garrett's actions at the hearing constituted a waiver, we decline to reach whether the exhibits violated the Privacy Act. The record before us clearly demonstrates that Garrett was fully aware of his right to present the video evidence and knowingly and voluntarily chose to relinquish it.[5]

Domestic Violence Protection Order

Garrett maintains that the court abused its discretion by granting Amina's petition for a DVPO because she failed to meet her burden of proving by a preponderance of the evidence that domestic violence occurred. He specifically

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decision . . . then the best thing I can suggest is . . . a short continuance, like, less than the standard two weeks."

[5] We reviewed a transcript of the hearing, rather than an audio recording.

takes issue with the two incidents the court outlined as examples for the bases for the protection order and claims they were not domestic violence as defined by statute. We disagree and conclude that substantial evidence supports the court's finding that Garrett committed acts of domestic violence.

At the time Amina filed her petition, the Domestic Violence Prevention Act (DVPA), former chapter 26.50 RCW (2019), governed civil domestic violence protection order proceedings.[6] A party seeking a protection order must allege the existence of domestic violence and must be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought. Former RCW 26.50.030(1) (2005). Domestic violence is "[p]hysical harm, bodily injury, assault, or the infliction of fear of imminent physical harm" between intimate partners or between family or household members. Former RCW 26.50.010(3) (2019). Evidence demonstrating a present fear based on past violence is a sufficient basis for granting a DVPO. Muma v. Muma, 115 Wn. App. 1, 6-7, 60 P.3d 592 (2002). A person may also petition for protection on behalf of minor household members, regardless of whether those minors witnessed acts of domestic violence or were themselves victims. Former RCW 26.50.020(1)(a) (2019); Rodriguez v. Zavala, 188 Wn.2d 586, 592-93, 598-99, 398 P.3d 1071 (2017). The petitioner must prove each element of former RCW 26.50.030 by a preponderance of the evidence. See Reese v. Stroh, 128 Wn.2d 300, 312, 907 P.2d 282 (1995) (setting out burden of proof in civil cases).

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[6] The DVPA was repealed by 2021 ch. 215 § 170, effective July 1, 2022. Its provisions are now codified under Civil Protection Orders, ch. 7.105 RCW.

To meet this standard, the court must find that it was more likely than not that domestic violence occurred. See In re Marriage of Freeman, 169 Wn.2d 664, 672-73, 239 P.3d 557 (2010).

Here, Amina's declaration alleged that she was "increasingly afraid of Garrett," that "[m]ost of the incidents of violence occur in front of the children or involve them," and that at times, she lived "in extreme fear for [her] life." Her declaration detailed more than 20 episodes of violence toward her and the children. In one of the worst incidents, Garrett slapped Amina's hand with such force that his finger jabbed into her eye and her head slammed backwards, striking a doorframe. A few minutes later, Garrett started filming Amina holding J.C., and told her, "Don't hit me." Amina responded: "You just assaulted me, you went into my eye and my head hit the wall." B.C. also witnessed Garrett recording Amina and appeared "very confused" about what was happening. After that incident, Amina said she "experienced eye pain non-stop for a month and received medical care for [her] eye and head." Attached to her declaration are photos from almost every incident, either of Amina or the children. The photos show red marks, bruises, and scratches consistent with Amina's recounting of the incidents. She also noted that Garrett owns several guns, many of which are stored inside the couple's house, and that she was unsure if the guns were locked or loaded.

After considering the evidence presented by the parties, the court concluded that Amina's version of events was "more credible" than Garrett's. The court found that the parties' children "were present for many of the incidents

alleged in the petition," including the July 17, 2019 incident where Garrett injured Amina's eye. The court also noted that the December 15, 2019 incident—in which Amina alleged that Garrett grabbed J.C. by the neck—supported including the children in the DVPO. Though Garrett denied this allegation, the court again found Amina's account "more credible."

Substantial evidence supports the court's findings and conclusion that Garrett perpetrated domestic violence against Amina and their children. Amina provided detailed a recounting of incidents that resulted in bodily harm, physical injury, and fear of imminent physical harm. And because the parties' children were present for and involved in certain instances of domestic violence, it was appropriate for the court to include them in the DVPO. Rodriguez, 188 Wn.2d at 595-98 (children's exposure to domestic violence constitutes domestic violence).

Garrett contends that the two incidents the court mentioned at the hearing do not constitute domestic violence as a matter of law.[7] We disagree.

First, Garrett asserts that the court wrongly concluded he did not act in self-defense during the July 17 incident in which Amina suffered an eye injury.

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[7] Garrett also implies that the two incidents discussed by the court were the only instances of domestic violence the court identified. But Garrett grossly misinterprets the record. The court merely highlighted these two incidents as examples of bases for the DVPO—it did not indicate that these were the only incidents of domestic violence. The court told Garrett's counsel as much after counsel tried to limit the court's ruling:

> MR. BERRY: And, again, if I may, Your Honor, just so I'm clear on the incidence of domestic violence, the one on July 17th . . . that's the assault that the Court is relying upon?
>
> THE COURT: That is the—that's the explicit one the Court discussed during its ruling, yes.

Whether he acted in self-defense is fundamentally a question of fact, susceptible to the court's determination after hearing evidence. See State v. Hatt, 11 Wn. App. 2d 113, 134-35, 452 P.3d 577 (2019) (whether defendant acted in self-defense is a question for the fact-finder). The parties agree that during that incident, Amina held her hand up in front of Garrett and that Garrett hit Amina's hand out of the way. Amina argues that she held her hand up to communicate "stop" and that Garrett responded with violence. Garrett contends that he interpreted Amina's raised hand as an act of aggression and responded by slapping her hand to protect himself. The trial court determined that Amina's story was more credible and Garrett cannot attack the court's credibility determination on appeal. Knight, 178 Wn. App. at 937 ("We defer to the trier of fact on the persuasiveness of the evidence, witness credibility, and conflicting testimony.").

Second, Garrett claims the court erred by concluding the December 15 incident—in which Amina alleges Garrett grabbed J.C. by the neck—did not constitute "reasonable physical discipline," because it based its conclusion "solely on speculation." The court did not err in determining that Garrett's actions were not reasonable physical discipline.

RCW 9A.16.100 allows parents to use moderate and reasonable physical discipline for purposes of restraining or correcting their children. The statute provides a nonexclusive list of unreasonable physical disciplinary actions including:

(1) Throwing, kicking, burning, or cutting a child; (2) striking a child

> with a closed fist; (3) shaking a child under age three; (4) interfering with a child's breathing; (5) threatening a child with a deadly weapon; or (6) doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks.

RCW 9A.16.100.

In determining whether physical discipline is reasonable, the fact finder should consider the age, size, and condition of the child, the location of the injury, the nature of the misconduct, and the child's developmental level. RCW 9A.16.100; WAC 110-30-0030.

Amina alleged that on December 15, 2019, "Garrett became physically aggressive with JC and lashed out at him by grabbing him around his neck." In support of this allegation, she provided photos of J.C. after the incident with red marks on his neck. The red marks on J.C.'s neck resemble finger marks, consistent with her story. The court noted that "[Garrett] denie[d] the incident took place and thus [did] not seem to be arguing that this was discipline per RCW 9A.16.100," but that "even if he had made such an argument . . . this conduct is beyond what is reasonable per that statute." The court concluded that "[g]rabbing a child's neck would interfere with a child's breathing and is explicitly stated within the statute as per se unreasonable."

The court did not err in concluding that Garrett's actions were likely to interfere with J.C.'s breathing, and therefore, not reasonable physical discipline under the statute. Contrary to Garrett's assertion, it is not speculative to conclude that grabbing a child by the neck hard enough to leave finger marks would interfere with their breathing. The photos provided by Amina show clear

red marks on J.C.'s neck, consistent with Amina's version of the events. The court did not abuse its discretion in granting the DVPO.

Challenges to Findings of Fact

Garrett challenges two of the court's findings of fact as not being supported by substantial evidence: (1) that he presented a credible threat to Amina, and (2) that the couple's children were exposed to domestic violence. We conclude that both findings were supported by substantial evidence.

Evidence is "substantial" when it is sufficient to persuade a fair-minded person of the truth of the matter asserted. Black, 188 Wn.2d at 127.

1. Garrett Presents a Credible Threat

The many episodes of abuse detailed in Amina's declaration demonstrate that Garrett perpetrated acts of domestic violence against her. Amina's description of these incidents, along with the supporting documentation and photos she provided, constitute substantial evidence supporting a finding that Garrett presented a credible threat to Amina.

Garrett attempts to contrast this case with In re Parentage of T.W.J., 193 Wn. App. 1, 367 P.3d 607 (2016). In T.W.J., this court upheld a finding that respondent represented a credible threat based on an e-mail from respondent's counsel to petitioner, in which counsel warned petitioner of respondent's threat to kill her. 193 Wn. App. at 6-7. Garrett asserts that there "is no such evidence here" and that Amina "has never alleged that [Garrett] has ever threatened to physically harm her or their children." But this argument misses the mark. Domestic violence is not confined to threats of physical violence. And Amina *has*

alleged that she felt threatened by Garrett on several occasions. Faced with overwhelming evidence, which it determined credible, and evidence that corroborated Amina's assertions that Garrett habitually committed acts of domestic violence, the trial court did not err in finding that Garrett presented a credible threat to Amina.

2. Children's Exposure to Domestic Violence

The December 15, 2019 incident, in which Garrett is alleged to have grabbed J.C. by the neck constitutes substantial evidence supporting a finding that the children were exposed to domestic violence. The incidents described in the section of Amina's declaration entitled "Past Violence Toward Children," also supports a finding that the children were exposed.

In an attempt to cabin the court's finding that the children were exposed to domestic violence, Garrett asserts that "there is no evidence that any of the parties' children, with the exception of [J.C.], were present at either of the two incidents which the court concluded constituted domestic violence." But the court's finding was not confined to the July 17 and December 15 incidents. The court clarified that those incidents were "the explicit one[s] the Court discussed during its ruling" and did not state that those were the only incidents supporting its findings. And contrary to Garrett's assertion, the record demonstrates that J.C. was not the only child present during the alleged incidents. For example, in March 2018, Amina alleges that Garrett "got physically aggressive with GC by slapping his leg." A few days later, Amina states that Garrett "became physically aggressive with LC by slapping, grabbing and being rough with her and scaring

her to the point where she was shaking and crying." Amina recalls Garrett "yelling, being aggressive, domineering, and threatening to LC." Photos of L.C. from after the incident corroborate Amina's story.

We conclude that substantial evidence supports the court's finding that the couple's children were exposed to domestic violence.

Constitutional Challenges

Garrett raises a series of constitutional challenges on appeal. He asserts the court erred in (1) not considering whether Garrett's constitutional right to parent was affected by the DVPO, (2) not conducting a strict scrutiny analysis, and (3) restricting Garrett's contact with his children. We do not find his arguments persuasive. Washington courts have already determined that the DVPA—and protection orders authorized by it—do not interfere with the constitutional right to parent.

"[P]arents have a fundamental right to autonomy in child rearing decisions." In re Custody of Smith, 137 Wn.2d 1, 13, 969 P.2d 21 (1998). Where a fundamental right is involved we apply the "strict scrutiny" test, which holds that the State may only interfere if it can show that it has a compelling interest and its interference is narrowly tailored to meet that compelling interest. Smith, 137 Wn.2d at 15. This test is satisfied when the State, exercising its parens patriae power, interferes in a parental relationship in which a child has been harmed or there is a credible threat of harm to the child. Stewart, 133 Wn. App. at 555; Smith, 137 Wn.2d at 16. We review constitutional challenges de novo. Aiken v. Aiken, 187 Wn.2d 491, 501, 387 P.3d 680 (2017).

Here, the court found that Garrett represented a credible threat to the physical safety of Amina and their children. The court also concluded that Garrett had harmed at least one of the children. Therefore, State interference in the form of a DVPO is justified to protect the children and does not violate Garrett's fundamental right to parent his children. Moreover, there was no error in the court not explicitly considering this right; it had no obligation to rehash settled case law when it granted the DVPO.

Garrett's arguments to the contrary are vague and unavailing. While he recognizes the State may interfere in a parental relationship when a child has been harmed or if there is a credible threat of harm, he maintains that the incidents the court relied on do not provide substantial evidence that any of the children were harmed. Relying on In re Marriage of C.M.C., Garrett claims that the incidents the court relied on are "de minimus" and that there is no compelling State interest where there are only "isolated, de minimus incidents which could technically be defined as domestic violence." 87 Wn. App. 84, 88, 940 P.2d 669 (1997). In C.M.C., this court, in dicta, noted that the commentary to the proposed Parenting Act of 1987 stated that the term "history of domestic violence" was intended to exclude "isolated, de minimus incidents which could technically be defined as domestic violence." 87 Wn. App. at 88 (quoting 1987 PROPOSED PARENTING ACT: REPLACING THE CONCEPT OF CHILD CUSTODY: COMMENTARY AND TEXT 29 (undated)). But that statute was later amended and is not at issue in the present case. Moreover, regardless of the precedential value of C.M.C., the incidents alleged here are certainly not de minimus or isolated. Rather, the

record demonstrates a history of domestic violence spanning several years. As previously discussed, substantial evidence supports the court's finding that Garrett posed a credible threat to the children.[8]

Relying next on State v. Ancira, Garrett asserts that any restriction of his contact with his children must be "reasonably necessary" and that limiting his contact to one hour a week over FaceTime or Zoom was not reasonably necessary. 107 Wn. App. 650, 27 P.3d 1246 (2001). But Ancira is distinguishable. Ancira involved a sentencing condition in a criminal case that prohibited the defendant from having contact with his children for five years. 107 Wn. App. at 652-53. On appeal, this court concluded that the evidence was insufficient to support such a severe prohibition against contact. Ancira, 107 Wn. App. at 654. Here, the evidence amply supported restricting contact and the DVPO is subject to residential provisions granted in the parties' ongoing dissolution proceeding. We conclude that the DVPO does not infringe upon Garrett's constitutional rights.

Domestic Violence Treatment

Garrett contends that the court abused its discretion by ordering him to participate in domestic violence treatment and the DV Dads program because

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[8] After argument, Garrett filed a Supplemental Memorandum Clarifying Responses to Questions Raised During Oral Argument and a related motion for leave to file that memorandum. He cites RAP 18.8(a) as authority allowing us to consider his arguments even though they are made outside of the normal briefing and argument process. RAP 18.8(a) allows us to waive the requirements of the rules of appellate procedure where we find it appropriate. We decline to exercise our discretionary powers under RAP 18.8(a) and do not consider his supplemental briefing.

such programs lack proof of efficacy. He also claims that ordering him to partake in treatment violates his constitutional rights. Both assertions are incorrect.

The DVPA authorizes courts to "[o]rder the respondent to participate in a domestic violence perpetrator treatment program approved under RCW 26.50.150."[9] Former RCW 26.50.060(1)(e) (2020).

Garrett asserts that the court violated his constitutional rights by ordering him to participate in a treatment program lacking proof of efficacy. He insists that "[n]o state interest is furthered by ordering a parent to complete a domestic violence treatment program which lacks evidence of efficacy." In support of his argument, Garrett relies on a 2013 report from the Washington State Institute for Public Policy.[10] But that report was disapproved of by Washington's Domestic Violence (DV) Manual for Judges as mischaracterizing the Domestic Violence Perpetrator Treatment Program, ch. 388-60B WAC, and using generally flawed research methodology. See GENDER & JUST. COMM'N, WASH. STATE SUP. CT., DOMESTIC VIOLENCE MANUAL FOR JUDGES app. B (2016) (APPENDIX B), https://www.courts.wa.gov/content/manuals/domViol/appendixB.pdf [https://perma.cc/C89R-RNEB].[11]

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[9] Former RCW 26.50.150 (2019) has been recodified as RCW 43.20A.735.

[10] M. MILLER, ET AL., WASH. STATE INST. FOR PUB. POL'Y (WSIPP), WHAT WORKS TO REDUCE RECIDIVISM BY DOMESTIC VIOLENCE OFFENDERS? (2013), https://www.wsipp.wa.gov/ReportFile/1119/Wsipp_What-Works-to-Reduce-Recidivism-by-Domestic-Violence-Offenders_Full-Report.pdf [https://perma.cc/6DKL-XKM2].

[11] For example, the DV Manual notes that the studies underlying the 2013 WSIPP report have been "extensively critiqued in multiple peer journals." APPENDIX B at 3 n.10. The DV Manual also states that WSIPP's conclusions "are

But Garrett fails to acknowledge that in 2018, the WAC chapter governing domestic violence treatment programming was repealed and replaced by WAC 388-60B. The updated WACs require an initial assessment to determine the "level of risk, needs, and responsivity for the participant" and the "level of treatment the program will require for the participant." WAC 388-60B-0400(2)(a)-(b). The purpose of this assessment is to provide "[b]ehaviorally focused individualized treatment goals or objectives for an initial treatment plan." WAC 388-60B-0400(2)(c). After the assessment, the program is required to write a summary including its findings, recommendation, and rationale for the level of treatment prescribed. WAC 388-60B-0400(19). And as part of this process, assessors are authorized to recommend no domestic violence intervention treatment where appropriate. WAC 388-60B-0400(10) and (19)(f). These procedures minimize the risk that Garrett will receive treatment that is unnecessary or unhelpful. The court did not abuse its discretion in ordering him to participate in treatment.

Best Interests of the Children

Garrett argues that the court erred in granting the DVPO without considering the best interests of the children. We conclude that the court considered the best interest of the children by granting the DVPO.

The Parenting Act of 1987, chapters 26.09, 26.10 RCW, requires the court to consider the best interests of the children when entering a parenting plan.

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not only inaccurate but simply cannot be supported either by the authors own meta-analysis or by a comprehensive review of the literature." APPENDIX B at 3 n.10.

RCW 26.09.184(1)(g); RCW 26.09.002. Former RCW 26.50.060(1)(d) provides that "[o]n the same basis as is provided in chapter 26.09 RCW, the court shall make residential provision with regard to minor children of the parties." However, the court is not required to "incorporate the full panoply of procedures and decision factors from the Parenting Act into the protection order proceeding" because that proceeding is intended to be "a rapid and efficient process." Stewart, 133 Wn. App. at 552. And the court does not need to make formal findings or follow formal proceedings as it would when entering a parenting plan. Stewart, 133 Wn. App. at 553. Rather, it only needs to consider the same factors in making its temporary orders. Stewart, 133 Wn. App. at 553.

Here, the court considered the best interests of the children by granting the DVPO after finding that Garrett presented a credible threat to the children. Garrett's assertion that "the lower court never even considered the best interests of these children" is not only unsupported by the record but directly contradicted by it. The court found that the children "were present for many of the incidents alleged in the petition" and that "exposure to domestic violence is domestic violence to the children and is sufficient to support a domestic violence protection order that protects the children as well." A denial of the DVPO petition, or ignoring its existence when entering residential provisions, would have been a failure to consider the best interests of the children. The court did not err.

Fees

Amina requests attorney fees on appeal under former RCW 26.50.060 and RAP 18.1. Garrett contends that because Amina did not request fees before

the trial court, she cannot request them on appeal. He also asserts that Amina cannot recoup fees under former RCW 26.50.060 because it has been repealed and is no longer an "applicable law" as required by RAP 18.1. We award Amina her reasonable attorney fees.

When Amina filed her petition, former chapter 26.50 RCW governed civil DVPO proceedings. That chapter still governs this proceeding. Under former RCW 26.50.060(1)(g), the court has discretion to require a respondent in a DVPO proceeding to pay petitioner's reasonable attorney fees. RAP 18.1 provides that the prevailing party on appeal may recover fees where fees are permitted at the trial court level. Because Amina is the prevailing party on appeal, she is entitled to her reasonable attorney fees.

We affirm.

Smith, C.J.

WE CONCUR:

Díaz, J.

Mann, J.

FILED
9/5/2023
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

AMINA J. CONDEL, Respondent, v. FRANK GARRETT CONDEL, Appellant.	No. 84310-9-I ORDER DENYING MOTION FOR RECONSIDERATION AND MOTION TO PUBLISH

Appellant Garrett Condel has moved for reconsideration of the opinion filed on July 31, 2023. The panel has considered the motion pursuant to RAP 12.4 and has determined that the motion should be denied.

Appellant Garrett Condel further moved to publish the opinion filed on July 31, 2023. Following consideration of the motion, the panel has determined the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration and the motion to publish are denied.

FOR THE COURT:

Judge

FILED
10/16/2023
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

AMINA J. CONDEL,

Respondent,

v.

FRANK GARRETT CONDEL,

Appellant.

No. 84310-9-I

ORDER ON MOTION TO MODIFY

Appellant Frank Garrett Condel moves to modify the commissioner's September 5, 2023 ruling awarding attorney fees to respondent Amina J. Condel. We have considered the motion under RAP 17.7 and have determined that it should be denied. Now, therefore, it is hereby

ORDERED that the motion to modify is DENIED.

Díaz, J.

Chung, J.

PDF **RCW 26.12.170**

Authority of family court judges and court commissioners to order or recommend services—Report by court of child abuse or neglect.

To facilitate and promote the purposes of this chapter, family court judges and court commissioners may order or recommend family court services, parenting seminars, drug and alcohol abuse evaluations and monitoring of the parties through public or private treatment services, other treatment services, the aid of physicians, psychiatrists, other specialists, or other services or may recommend the aid of the pastor or director of any religious denomination to which the parties may belong.

If the court has reasonable cause to believe that a child of the parties has suffered abuse or neglect it may file a report with the proper law enforcement agency or the department of social and health services as provided in RCW **26.44.040**. Upon receipt of such a report the law enforcement agency or the department of social and health services will conduct an investigation into the cause and extent of the abuse or neglect. The findings of the investigation may be made available to the court if ordered by the court as provided in RCW **42.56.210**(2). The findings shall be restricted to the issue of abuse and neglect and shall not be considered custody investigations.

[**2005 c 274 § 241**; **1994 c 267 § 3**; **1991 c 367 § 13**; **1983 c 219 § 5**; **1971 ex.s. c 151 § 2**; **1949 c 50 § 17**; Rem. Supp. 1949 § 997-46.]

NOTES:

Effective date—1994 c 267: See note following RCW **26.09.191**.

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW **26.09.015**.

West's Revised Code of Washington Annotated
Title 9a. Washington Criminal Code (Refs & Annos)
Chapter 9A.16. Defenses (Refs & Annos)

Proposed Legislation

West's RCWA 9A.16.100

9A.16.100. Use of force on children--Policy--Actions presumed unreasonable

Currentness

It is the policy of this state to protect children from assault and abuse and to encourage parents, teachers, and their authorized agents to use methods of correction and restraint of children that are not dangerous to the children. However, the physical discipline of a child is not unlawful when it is reasonable and moderate and is inflicted by a parent, teacher, or guardian for purposes of restraining or correcting the child. Any use of force on a child by any other person is unlawful unless it is reasonable and moderate and is authorized in advance by the child's parent or guardian for purposes of restraining or correcting the child.

The following actions are presumed unreasonable when used to correct or restrain a child: (1) Throwing, kicking, burning, or cutting a child; (2) striking a child with a closed fist; (3) shaking a child under age three; (4) interfering with a child's breathing; (5) threatening a child with a deadly weapon; or (6) doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks. The age, size, and condition of the child and the location of the injury shall be considered when determining whether the bodily harm is reasonable or moderate. This list is illustrative of unreasonable actions and is not intended to be exclusive.

Credits

[1986 c 149 § 1.]

Notes of Decisions (8)

West's RCWA 9A.16.100, WA ST 9A.16.100
Current with all legislation from the 2023 Regular and First Special Sessions of the Washington Legislature. Some statute sections may be more current, see credits for details

End of Document

Washington Administrative Code
Title 110. Department of Children, Youth, and Families
Chapter 110-30. Child Protective Services
Program Description

WAC 110-30-0030
Formerly cited as WA ADC 388-15-009

110-30-0030. What is child abuse or neglect?

Currentness

Child abuse or neglect means the injury, sexual abuse, or sexual exploitation of a child by any person under circumstances which indicate that the child's health, welfare, or safety is harmed, or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. An abused child is one who has been subjected to child abuse or neglect as defined in this section.

(1) Physical abuse means the nonaccidental infliction of physical injury or physical mistreatment on a child that harms the child's health, welfare, or safety. It may include, but is not limited to, such actions as:

(a) Throwing, kicking, burning, or cutting a child;

(b) Striking a child with a closed fist;

(c) Shaking a child under age three;

(d) Interfering with a child's breathing;

(e) Threatening a child with a deadly weapon; or

(f) Doing any other act that is likely to cause and that does cause bodily harm greater than transient pain or minor temporary marks or that is injurious to the child's health, welfare or safety.

(2) Physical discipline of a child, including the reasonable use of corporal punishment, is not considered abuse when it is reasonable and moderate and is inflicted by a parent or guardian for the purposes of restraining or correcting the child. The age, size, and condition of the child, and the location of any inflicted injury shall be considered in determining whether the bodily harm is reasonable or moderate. Other factors may include the developmental level of the child and the nature of the child's misconduct. A parent's belief that it is necessary to punish a child does not justify or permit the use of excessive, immoderate or unreasonable force against the child.

(3) Sexual abuse means committing or allowing to be committed any sexual offense against a child as defined in the criminal code. The intentional touching, either directly or through the clothing, of the sexual or other intimate parts of a child or allowing, permitting, compelling, encouraging, aiding, or otherwise causing a child to engage in touching the sexual or other intimate parts of another for the purpose of gratifying the sexual desire of the person touching the child, the child, or a third party. A parent or guardian of a child, a person authorized by the parent or guardian to provide childcare for the child, or a person providing medically recognized services for the child, may touch a child in the sexual or other intimate parts for the purposes of providing hygiene, child care, and medical treatment or diagnosis.

(4) Sexual exploitation includes, but is not limited to, sex trafficking and commercial sexual exploitation as those terms are defined by law and includes such actions as allowing, compelling, encouraging, aiding, or otherwise causing a child to participate in one or more of the following:

(a) Any sex act when anything of value is given to or received by any person for the sex act;

(b) Sexually explicit, obscene, or pornographic activity to be photographed, filmed, or electronically reproduced or transmitted;

(c) Sexually explicit, obscene, or pornographic activity as part of a live performance or for the benefit or sexual gratification of another person.

(5) Negligent treatment or maltreatment means an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, on the part of a child's parent, legal custodian, guardian, or caregiver that shows a serious disregard of the consequences to the child and creates a clear and present danger to the child's health, welfare, or safety.

(a) When considering whether a clear and present danger exists, evidence of a parent's substance abuse as a contributing factor must be given great weight.

(b) The fact that the siblings share a bedroom is not, in and of itself, negligent treatment or maltreatment.

(c) Poverty, homelessness, or exposure to domestic violence perpetuated against someone other than the child does not, in and of itself, constitute negligent treatment or maltreatment.

(d) A child does not have to suffer actual damage or physical or emotional harm to be in circumstances that create a clear and present danger to the child's health, welfare, or safety.

(e) Negligent treatment or maltreatment may include, but is not limited to one or more of the following:

(i) Failure to provide adequate food, shelter, clothing, supervision, or health care necessary for a child's health, welfare, or safety, such that the failure shows a serious disregard of the consequence to the child and creates a clear and present danger to the child's health, welfare, or safety;

(ii) Actions, failures to act, or omissions that result in injury or risk of injury to the physical, emotional, and/or cognitive development of a child, such that it shows a serious disregard of the consequences to the child and creates a clear and present danger to the child's health, welfare, or safety;

(iii) The cumulative effects of a pattern of conduct, behavior, or inaction by a parent or guardian in providing for the physical, emotional or developmental needs of the child, such that it shows a serious disregard of the consequences to the child and creates a clear and present danger to the child's health, welfare, or safety;

(iv) The effects of chronic failure on the part of a parent or guardian to perform basic parental functions, obligations, or duties that causes injury or substantial risk of injury to the physical, emotional, or cognitive development of the child, such that it shows a serious disregard of the consequences to the child and creates a clear and present danger to the child's health, welfare, or safety.

Credits

WSR 18-14-078, recodified as S 110-30-0030, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.08.090, 74.04.050, 74.13.031, chapter 26.44 RCW. WSR 17-22-059, S 388-15-009, filed 10/26/17, effective 11/26/17; Statutory Authority: RCW 74.08.090, 74.04.050, 74.13.031, chapter 26.44 RCW. WSR 17-20-004, S 388-15-009, emergency action filed 9/21/17, effective 9/22/17; Statutory Authority: RCW 74.08.090, 74.04.050, 74.13.031, chapter 26.44 RCW, and 2005 c 512. WSR 07-14-011, S 388-15-009, filed 6/22/07, effective 7/23/07. Statutory Authority: RCW 74.13.031, 74.04.050, and chapter 26.44 RCW. WSR 02-15-098 and 02-17-045, S 388-15-009, filed 7/16/02 and 8/14/02, effective 2/10/03.

Current with amendments adopted through the 23-17 Washington State Register, dated September 6, 2023. Some sections may be more current. Please consult the credit on each document for more information.
WAC 110-30-0030, WA ADC 110-30-0030

End of Document

2005 Washington Revised Code RCW 26.50.060: Relief — Duration — Realignment of designation of parties — Award of costs, service fees, and attorneys\' fees.

(1) Upon notice and after hearing, the court may provide relief as follows:

(a) Restrain the respondent from committing acts of domestic violence;

(b) Exclude the respondent from the dwelling that the parties share, from the residence, workplace, or school of the petitioner, or from the day care or school of a child;

(c) Prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;

(d) On the same basis as is provided in chapter 26.09 RCW, the court shall make residential provision with regard to minor children of the parties. However, parenting plans as specified in chapter 26.09 RCW shall not be required under this chapter;

(e) Order the respondent to participate in a domestic violence perpetrator treatment program approved under RCW 26.50.150;

(f) Order other relief as it deems necessary for the protection of the petitioner and

other family or household members sought to be protected, including orders or directives to a peace officer, as allowed under this chapter;

(g) Require the respondent to pay the administrative court costs and service fees, as established by the county or municipality incurring the expense and to reimburse the petitioner for costs incurred in bringing the action, including reasonable attorneys' fees;

(h) Restrain the respondent from having any contact with the victim of domestic violence or the victim's children or members of the victim's household;

(i) Require the respondent to submit to electronic monitoring. The order shall specify who shall provide the electronic monitoring services and the terms under which the monitoring must be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the respondent to pay for electronic monitoring;

(j) Consider the provisions of RCW 9.41.800;

(k) Order possession and use of essential personal effects. The court shall list the essential personal effects with sufficient specificity to make it clear which property is included; and

(l) Order use of a vehicle.

(2) If a protection order restrains the respondent from contacting the respondent's minor children the restraint shall be for a fixed period not to exceed one year. This limitation is not applicable to orders for protection issued under chapter 26.09, 26.10, or 26.26 RCW. With regard to other relief, if the petitioner has petitioned for relief on his or her own behalf or on behalf of the petitioner's family or household members or minor children, and the court finds that the respondent is likely to resume acts of domestic violence against the petitioner or the petitioner's family or household members or minor children when the order expires, the court may either grant relief for a fixed period or enter a permanent order of protection.

If the petitioner has petitioned for relief on behalf of the respondent's minor children, the court shall advise the petitioner that if the petitioner wants to continue

protection for a period beyond one year the petitioner may either petition for renewal pursuant to the provisions of this chapter or may seek relief pursuant to the provisions of chapter 26.09 or 26.26 RCW.

(3) If the court grants an order for a fixed time period, the petitioner may apply for renewal of the order by filing a petition for renewal at any time within the three months before the order expires. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order. Upon receipt of the petition for renewal the court shall order a hearing which shall be not later than fourteen days from the date of the order. Except as provided in RCW 26.50.085, personal service shall be made on the respondent not less than five days before the hearing. If timely service cannot be made the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided in RCW 26.50.085 or by mail as provided in RCW 26.50.123. If the court permits service by publication or mail, the court shall set the new hearing date not later than twenty-four days from the date of the order. If the order expires because timely service cannot be made the court shall grant an ex parte order of protection as provided in RCW 26.50.070. The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume acts of domestic violence against the petitioner or the petitioner's children or family or household members when the order expires. The court may renew the protection order for another fixed time period or may enter a permanent order as provided in this section. The court may award court costs, service fees, and reasonable attorneys' fees as provided in *subsection (1)(f) of this section.

(4) In providing relief under this chapter, 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 and may issue an ex parte temporary order for protection in accordance with RCW 26.50.070 on behalf of the victim until the victim is able to prepare a petition for an order for protection in accordance with RCW 26.50.030.

(5) Except as provided in subsection (4) of this section, no order for protection shall grant relief to any party except upon notice to the respondent and hearing pursuant to a petition or counter-petition filed and served by the party seeking relief in accordance with RCW 26.50.050.

(6) The court order shall specify the date the order expires if any. The court order shall also state whether the court issued the protection order following personal service, service by publication, or service by mail and whether the court has approved service by publication or mail of an order issued under this section.

(7) If the court declines to issue an order for protection or declines to renew an order for protection, the court shall state in writing on the order the particular reasons for the court's denial.

[2000 c 119 § 15; 1999 c 147 § 2; 1996 c 248 § 13; 1995 c 246 § 7; 1994 sp.s. c 7 § 457. Prior: 1992 c 143 § 2; 1992 c 111 § 4; 1992 c 86 § 4; 1989 c 411 § 1; 1987 c 460 § 55; 1985 c 303 § 5; 1984 c 263 § 7.]

Notes:

***Reviser's note:** Subsection (1)(f) of this section was renumbered as subsection (1)(g) by 2000 c 119 § 15.

Application -- 2000 c 119: See note following RCW 26.50.021.

Severability -- 1995 c 246: See note following RCW 26.50.010.

Finding -- Intent -- Severability -- 1994 sp.s. c 7: See notes following RCW 43.70.540.

Effective date -- 1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460: See note following RCW 9.41.010.

Findings -- 1992 c 111: See note following RCW 26.50.030.

Short title -- Section captions -- Effective date -- Severability -- 1987 c 460: See RCW 26.09.910 through 26.09.913.

26.09.002. Policy

WA ST 26.09.002 › West's Revised Code of Washington Annotated › Title 26. Domestic Relations › Effective: July 22, 2007 (Approx. 2 pages)

West's Revised Code of Washington Annotated
Title 26. Domestic Relations (Refs & Annos)
Chapter 26.09. Dissolution Proceedings--Legal Separation (Refs & Annos)

Effective: July 22, 2007

West's RCWA 26.09.002

26.09.002. Policy

Currentness

Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities. The state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests. Residential time and financial support are equally important components of parenting arrangements. The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care. Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm.

Credits

[2007 c 496 § 101, eff. July 22, 2007; 1987 c 460 § 2.]

OFFICIAL NOTES

Part headings not law--2007 c 496: "Part headings used in this act are not any part of the law." [2007 c 496 § 801.]

Notes of Decisions (26)

West's RCWA 26.09.002, WA ST 26.09.002
Current with all legislation from the 2023 Regular and First Special Sessions of the Washington Legislature. Some statute sections may be more current, see credits for details

End of Document

26.09.003. Policy--Intent--Findings

West's Revised Code of Washington Annotated
Title 26. Domestic Relations (Refs & Annos)
Chapter 26.09. Dissolution Proceedings--Legal Separation (Refs & Annos)

Effective: July 1, 2022

West's RCWA 26.09.003

26.09.003. Policy--Intent--Findings

Currentness

The legislature reaffirms the intent of the current law as expressed in RCW 26.09.002. However, after review, the legislature finds that there are certain components of the existing law which do not support the original legislative intent. In order to better implement the existing legislative intent the legislature finds that incentives for parties to reduce family conflict and additional alternative dispute resolution options can assist in reducing the number of contested trials. Furthermore, the legislature finds that the identification of domestic violence as defined in RCW 7.105.010 and the treatment needs of the parties to dissolutions are necessary to improve outcomes for children. When judicial officers have the discretion to tailor individualized resolutions, the legislative intent expressed in RCW 26.09.002 can more readily be achieved. Judicial officers should have the discretion and flexibility to assess each case based on the merits of the individual cases before them.

Credits

[2021 c 215 § 130, eff. July 1, 2022; 2007 c 496 § 102, eff. July 22, 2007.]

OFFICIAL NOTES

Effective date--2022 c 268; 2021 c 215: See note following RCW 7.105.900.

Part headings not law--2007 c 496: See note following RCW 26.09.002.

Notes of Decisions (1)

West's RCWA 26.09.003, WA ST 26.09.003
Current with all legislation from the 2023 Regular and First Special Sessions of the Washington Legislature. Some statute sections may be more current, see credits for details

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26.09.191. Restrictions in temporary or permanent parenting pl...

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West's Revised Code of Washington Annotated
Title 26. Domestic Relations (Refs & Annos)
Chapter 26.09. Dissolution Proceedings--Legal Separation (Refs & Annos)

Proposed Legislation

Effective: July 1, 2022

West's RCWA 26.09.191

26.09.191. Restrictions in temporary or permanent parenting plans

Currentness

(1) The permanent parenting plan shall not require mutual decision-making or designation of a dispute resolution process other than court action if it is found that a parent has engaged in any of the following conduct: (a) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (b) physical, sexual, or a pattern of emotional abuse of a child; or (c) a history of acts of domestic violence as defined in RCW 7.105.010 or an assault or sexual assault that causes grievous bodily harm or the fear of such harm or that results in a pregnancy.

(2)(a) The parent's residential time with the child shall be limited if it is found that the parent has engaged in any of the following conduct: (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (ii) physical, sexual, or a pattern of emotional abuse of a child; (iii) a history of acts of domestic violence as defined in RCW 7.105.010 or an assault or sexual assault that causes grievous bodily harm or the fear of such harm or that results in a pregnancy; or (iv) the parent has been convicted as an adult of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (a)(iv)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (a)(iv)(A) through (H) of this subsection.

This subsection (2)(a) shall not apply when (c) or (d) of this subsection applies.

(b) The parent's residential time with the child shall be limited if it is found that the parent resides with a person who has engaged in any of the following conduct: (i) Physical, sexual, or a pattern of emotional abuse of a child; (ii) a history of acts of domestic violence as defined in RCW 7.105.010 or an assault or sexual assault that causes grievous bodily harm or the fear of such harm or that results in a pregnancy; or (iii) the person has been convicted as an adult or as a juvenile has been adjudicated of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (b)(iii)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (b)(iii)(A) through (H) of this subsection.

This subsection (2)(b) shall not apply when (c) or (e) of this subsection applies.

(c) If a parent has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter. If a parent resides with an adult or a juvenile who has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with the parent's child except contact that occurs outside that person's presence.

(d) There is a rebuttable presumption that a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection poses a present danger to a child. Unless the parent rebuts this presumption, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW 9A.44.073;

(iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;

(iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;

(v) RCW 9A.44.083;

(vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;

(vii) RCW 9A.44.100;

(viii) Any predecessor or antecedent statute for the offenses listed in (d)(i) through (vii) of this subsection;

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (d)(i) through (vii) of this subsection.

(e) There is a rebuttable presumption that a parent who resides with a person who, as an adult, has been convicted, or as a juvenile has been adjudicated, of the sex offenses listed in (e)(i) through (ix) of this subsection places a child at risk of abuse or harm when that parent exercises residential time in the presence of the convicted or adjudicated person. Unless the parent rebuts the presumption, the court shall restrain the parent from contact with the parent's child except for contact that occurs outside of the convicted or adjudicated person's presence:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW 9A.44.073;

(iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;

(iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;

(v) RCW 9A.44.083;

(vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;

(vii) RCW 9A.44.100;

(viii) Any predecessor or antecedent statute for the offenses listed in (e)(i) through (vii) of this subsection;

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (e)(i) through (vii) of this subsection.

(f) The presumption established in (d) of this subsection may be rebutted only after a written finding that the child was not conceived and subsequently born as a result of a sexual assault committed by the parent requesting residential time and that:

(i) If the child was not the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, and (B) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the offending parent is in the child's best interest, and (C) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child.

(g) The presumption established in (e) of this subsection may be rebutted only after a written finding that the child was not conceived and subsequently born as a result of a sexual assault committed by the parent requesting residential time and that:

(i) If the child was not the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent residing with the convicted or adjudicated person is appropriate and that parent is able to protect the child in the presence of the convicted or adjudicated person, and (B) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the parent residing with the convicted or adjudicated person in the presence of the convicted or adjudicated person is in the child's best interest, and (C) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes contact between the parent and child in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child.

(h) If the court finds that the parent has met the burden of rebutting the presumption under (f) of this subsection, the court may allow a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection to have residential time with the child supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(i) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who has been adjudicated as a juvenile of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the person adjudicated as a juvenile, supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(j) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who, as an adult, has been convicted of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the convicted person supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(k) A court shall not order unsupervised contact between the offending parent and a child of the offending parent who was sexually abused by that parent. A court may order unsupervised contact between the offending parent and a child who was not sexually abused by the parent after the presumption under (d) of this subsection has been rebutted and supervised residential time has occurred for at least two years with no further arrests or convictions of

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sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW and (i) the sex offense of the offending parent was not committed against a child of the offending parent, and (ii) the court finds that unsupervised contact between the child and the offending parent is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treating child sexual abuse victims who has supervised at least one period of residential time between the parent and the child, and after consideration of evidence of the offending parent's compliance with community supervision requirements, if any. If the offending parent was not ordered by a court to participate in treatment for sex offenders, then the parent shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the offender has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child.

(l) A court may order unsupervised contact between the parent and a child which may occur in the presence of a juvenile adjudicated of a sex offense listed in (e)(i) through (ix) of this subsection who resides with the parent after the presumption under (e) of this subsection has been rebutted and supervised residential time has occurred for at least two years during which time the adjudicated juvenile has had no further arrests, adjudications, or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW, and (i) the court finds that unsupervised contact between the child and the parent that may occur in the presence of the adjudicated juvenile is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treatment of child sexual abuse victims who has supervised at least one period of residential time between the parent and the child in the presence of the adjudicated juvenile, and after consideration of evidence of the adjudicated juvenile's compliance with community supervision or parole requirements, if any. If the adjudicated juvenile was not ordered by a court to participate in treatment for sex offenders, then the adjudicated juvenile shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the adjudicated juvenile has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child which may occur in the presence of the adjudicated juvenile who is residing with the parent.

(m)(i) The limitations imposed by the court under (a) or (b) of this subsection shall be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting residential time. The limitations shall also be reasonably calculated to provide for the safety of the parent who may be at risk of physical, sexual, or emotional abuse or harm that could result if the parent has contact with the parent requesting residential time. The limitations the court may impose include, but are not limited to: Supervised contact between the child and the parent or completion of relevant counseling or treatment. If the court expressly finds based on the evidence that limitations on the residential time with the child will not adequately protect the child from the harm or abuse that could result if the child has contact with the parent requesting residential time, the court shall restrain the parent requesting residential time from all contact with the child.

(ii) The court shall not enter an order under (a) of this subsection allowing a parent to have contact with a child if the parent has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused the child, except upon recommendation by an evaluator or therapist for the child that the child is ready for contact with the parent and will not be harmed by the contact. The court shall not enter an order allowing a parent to have contact with the child in the offender's presence if the parent resides with a person who has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused a child, unless the court finds that the parent accepts that the person engaged in the harmful conduct and the parent is willing to and capable of protecting the child from harm from the person.

(iii) The court shall not enter an order under (a) of this subsection allowing a parent to have contact with a child if the parent has been found by clear and convincing evidence pursuant to RCW 26.26A.465 to have committed sexual assault, as defined in RCW 26.26A.465, against the child's parent, and that the child was born within three hundred twenty days of the sexual assault.

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(iv) If the court limits residential time under (a) or (b) of this subsection to require supervised contact between the child and the parent, the court shall not approve of a supervisor for contact between a child and a parent who has engaged in physical, sexual, or a pattern of emotional abuse of the child unless the court finds based upon the evidence that the supervisor accepts that the harmful conduct occurred and is willing to and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing to or capable of protecting the child.

(n) If the court expressly finds based on the evidence that contact between the parent and the child will not cause physical, sexual, or emotional abuse or harm to the child and that the probability that the parent's or other person's harmful or abusive conduct will recur is so remote that it would not be in the child's best interests to apply the limitations of (a), (b), and (m)(i) and (iv) of this subsection, or if the court expressly finds that the parent's conduct did not have an impact on the child, then the court need not apply the limitations of (a), (b), and (m)(i) and (iv) of this subsection. The weight given to the existence of a protection order issued under chapter 7.105 RCW or former chapter 26.50 RCW as to domestic violence is within the discretion of the court. This subsection shall not apply when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this subsection apply.

(3) A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist:

(a) A parent's neglect or substantial nonperformance of parenting functions;

(b) A long-term emotional or physical impairment which interferes with the parent's performance of parenting functions as defined in RCW 26.09.004;

(c) A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions;

(d) The absence or substantial impairment of emotional ties between the parent and the child;

(e) The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development. Abusive use of conflict includes, but is not limited to, abusive litigation as defined in RCW 26.51.020. If the court finds a parent has engaged in abusive litigation, the court may impose any restrictions or remedies set forth in chapter 26.51 RCW in addition to including a finding in the parenting plan. Litigation that is aggressive or improper but that does not meet the definition of abusive litigation shall not constitute a basis for a finding under this section. A report made in good faith to law enforcement, a medical professional, or child protective services of sexual, physical, or mental abuse of a child shall not constitute a basis for a finding of abusive use of conflict;

(f) A parent has withheld from the other parent access to the child for a protracted period without good cause; or

(g) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

(4) In cases involving allegations of limiting factors under subsection (2)(a)(ii) and (iii) of this section, both parties shall be screened to determine the appropriateness of a comprehensive assessment regarding the impact of the limiting factor on the child and the parties.

(5) In entering a permanent parenting plan, the court shall not draw any presumptions from the provisions of the temporary parenting plan.

(6) In determining whether any of the conduct described in this section has occurred, the court shall apply the civil rules of evidence, proof, and procedure.

(7) For the purposes of this section:

(a) "A parent's child" means that parent's natural child, adopted child, or stepchild; and

(b) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010.

Credits

[2021 c 215 § 134, eff. July 1, 2022; 2020 c 311 § 8, eff. Jan. 1, 2021; 2019 c 46 § 5020, eff. July 28, 2019; 2017 c 234 § 2, eff. July 23, 2017; 2011 c 89 § 6, eff. Jan. 1, 2012; 2007 c 496 § 303, eff. July 22, 2007; 2004 c 38 § 12, eff. July 1, 2004; 1996 c 303 § 1; 1994 c 267 § 1. Prior: 1989 c 375 § 11; 1989 c 326 § 1; 1987 c 460 § 10.]

OFFICIAL NOTES

Effective date--2022 c 268; 2021 c 215: See note following RCW 7.105.900.

Effective date--2020 c 311: See RCW 26.51.901.

Effective date--2011 c 89: See note following RCW 18.320.005.

Findings--2011 c 89: See RCW 18.320.005.

Part headings not law--2007 c 496: See note following RCW 26.09.002.

Effective date--2004 c 38: See note following RCW 18.155.075.

Effective date--1996 c 303: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 1996]." [1996 c 303 § 3.]

Effective date--1994 c 267: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 267 § 6.]

Notes of Decisions (55)

West's RCWA 26.09.191, WA ST 26.09.191
Current with all legislation from the 2023 Regular and First Special Sessions of the Washington Legislature. Some statute sections may be more current, see credits for details

End of Document

26.09.187. Criteria for establishing permanent parenting plan

WA ST 26.09.187 • West's Revised Code of Washington Annotated • Title 26. Domestic Relations • Effective: July 22, 2007 (Approx. 3 pages)

§

West's Revised Code of Washington Annotated
Title 26. Domestic Relations (Refs & Annos)
Chapter 26.09. Dissolution Proceedings--Legal Separation (Refs & Annos)

Effective: July 22, 2007

West's RCWA 26.09.187

26.09.187. Criteria for establishing permanent parenting plan

Currentness

(1) DISPUTE RESOLUTION PROCESS. The court shall not order a dispute resolution process, except court action, when it finds that any limiting factor under RCW 26.09.191 applies, or when it finds that either parent is unable to afford the cost of the proposed dispute resolution process. If a dispute resolution process is not precluded or limited, then in designating such a process the court shall consider all relevant factors, including:

(a) Differences between the parents that would substantially inhibit their effective participation in any designated process;

(b) The parents' wishes or agreements and, if the parents have entered into agreements, whether the agreements were made knowingly and voluntarily; and

(c) Differences in the parents' financial circumstances that may affect their ability to participate fully in a given dispute resolution process.

(2) ALLOCATION OF DECISION-MAKING AUTHORITY.

(a) AGREEMENTS BETWEEN THE PARTIES. The court shall approve agreements of the parties allocating decision-making authority, or specifying rules in the areas listed in RCW 26.09.184(5)(a), when it finds that:

(i) The agreement is consistent with any limitations on a parent's decision-making authority mandated by RCW 26.09.191; and

(ii) The agreement is knowing and voluntary.

(b) SOLE DECISION-MAKING AUTHORITY. The court shall order sole decision-making to one parent when it finds that:

(i) A limitation on the other parent's decision-making authority is mandated by RCW 26.09.191;

(ii) Both parents are opposed to mutual decision making;

(iii) One parent is opposed to mutual decision making, and such opposition is reasonable based on the criteria in (c) of this subsection.

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(c) MUTUAL DECISION-MAKING AUTHORITY. Except as provided in (a) and (b) of this subsection, the court shall consider the following criteria in allocating decision-making authority:

(i) The existence of a limitation under RCW 26.09.191;

(ii) The history of participation of each parent in decision making in each of the areas in RCW 26.09.184(5)(a);

(iii) Whether the parents have a demonstrated ability and desire to cooperate with one another in decision making in each of the areas in RCW 26.09.184(5)(a); and

(iv) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

(3) RESIDENTIAL PROVISIONS.

(a) The court shall make residential provisions for each child which encourage each parent to maintain a loving, stable, and nurturing relationship with the child, consistent with the child's developmental level and the family's social and economic circumstances. The child's residential schedule shall be consistent with RCW 26.09.191. Where the limitations of RCW 26.09.191 are not dispositive of the child's residential schedule, the court shall consider the following factors:

(i) The relative strength, nature, and stability of the child's relationship with each parent;

(ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;

(iii) Each parent's past and potential for future performance of parenting functions as defined in *RCW 26.09.004(3), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;

(iv) The emotional needs and developmental level of the child;

(v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;

(vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and

(vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.

Factor (i) shall be given the greatest weight.

(b) Where the limitations of RCW 26.09.191 are not dispositive, the court may order that a child frequently alternate his or her residence between the households of the parents for brief and substantially equal intervals of time if such provision is in the best interests of the child. In determining whether such an arrangement is in the best interests of the child, the court may consider the parties geographic proximity to the extent necessary to ensure the ability to share performance of the parenting functions.

(c) For any child, residential provisions may contain any reasonable terms or conditions that facilitate the orderly and meaningful exercise of residential time by a parent, including but not limited to requirements of reasonable notice when residential time will not occur.

Credits

[2007 c 496 § 603, eff. July 22, 2007; 1989 c 375 § 10; 1987 c 460 § 9.]

OFFICIAL NOTES

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*Reviser's note: RCW 26.09.004 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (3) to subsection (2).

Part headings not law--2007 c 496: See note following RCW 26.09.002.

Notes of Decisions (112)

West's RCWA 26.09.187, WA ST 26.09.187
Current with all legislation from the 2023 Regular and First Special Sessions of the Washington Legislature. Some statute sections may be more current, see credits for details

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January 2013

What Works to Reduce Recidivism by Domestic Violence Offenders?

In Washington and across the United States, courts often order offenders charged with domestic violence (DV) crimes to attend DV treatment. Attending DV treatment may be a condition of a sentence handed down by a judge or a requirement of a deferred disposition.

The 2012 Washington State Legislature directed the Washington State Institute for Public Policy (Institute) to update its systematic review of the national and international literature on the effectiveness of DV treatment programs.[1] The Institute had previously found that DV treatment has little or no significant impact on repeat domestic violence (recidivism).[2] Other researchers have reached similar conclusions.[3]

In this report, we update and extend our earlier review to include other types of DV interventions. The Institute was directed to conduct the review of the DV literature in collaboration with the Washington State Supreme Court Gender and Justice Commission and experts on domestic violence.

The 2012 Legislature also asked the Institute to survey other states regarding legal requirements for DV cases, and to report recidivism rates of Washington's DV offenders (see box, page 2).

This report first presents findings from our review of the literature to determine "what works" to reduce recidivism by DV offenders. Second, we report the results from our survey of other states regarding the legal requirements for DV treatment. Recidivism rates will be presented in an upcoming Institute report to be published later in January 2013.

[1] RCW 26.50.800

[2] Lee, S., Aos, S., Drake, E., Pennucci, A., Miller, M., Anderson, L. (2012). *Return on Investment: Evidence-based options to improve statewide outcomes, April 2012 update* (Document No. 12-04-1201). Olympia: Washington State Institute for Public Policy.

[3] Klein, A. R. (2009). *Practical implications of current domestic violence research: For law enforcement, prosecutors and judges.* Washington, DC: Office of Justice Programs, U.S. Dept. of Justice; Feder, L. & Wilson, D.B. (2005). A Meta-Analytic Review of Court-Mandated Batterer Intervention Programs: Can Courts Affect Abusers Behavior? *Journal of Experimental Criminology*, 1(2): 239-262; Babcock, J.C., C.E. Green, and C. Roble. (2004). Does batterers treatment work? A meta-analytic review of domestic violence treatment. *Clinical Psychology Review* 23(8): 1023-1053.

Summary

The 2012 Washington State Legislature directed the Washington State Institute for Public Policy to: a) update its analysis of the national and international literature on domestic violence (DV) treatment; b) report on other interventions effective at reducing recidivism by DV offenders and criminal offenders in general; and c) survey other states' laws regarding DV treatment for offenders.

Similar to 25 other states, Washington's legal standards for DV treatment require treatment to be group-based and incorporate elements of a treatment model developed in the 1980s in Duluth, MN.

In updating our review of the literature, we identified 11 rigorous evaluations—none from Washington—testing whether DV treatment has a cause-and-effect relationship with DV recidivism. Six of those evaluations tested the effectiveness of Duluth-like treatments. We found no effect on DV recidivism with the Duluth model. There may be other reasons for courts to order offenders to participate in these Duluth-like programs, but the evidence to date suggests that DV recidivism will not decrease as a result.

Our review indicates that there may be other group-based treatments for male DV offenders that effectively reduce DV recidivism. We found five rigorous evaluations covering a variety of non-Duluth group-based treatments. On average, this diverse collection of programs reduced DV recidivism by 33%. Unfortunately, these interventions are so varied in their approaches that we cannot identify a particular group-based treatment to replace the Duluth-like model required by Washington State law. Additional outcome evaluations, perhaps of the particular DV programs in Washington State, would help identify effective alternatives to the Duluth model.

This report includes separate statements from the Washington State Supreme Court Gender and Justice Commission and the Northwest Association of Domestic Violence Treatment Professionals.

Suggested citation: Miller, M., Drake, E., & Nafziger, M. (2013). *What works to reduce recidivism by domestic violence offenders?* (Document No. 13-01-1201). Olympia: Washington State Institute for Public Policy.

I. WHAT WORKS TO REDUCE RECIDIVISM BY DV OFFENDERS?

BACKGROUND

Washington State law defines domestic violence broadly as acts or threats of physical harm, sexual assault, or stalking by one household or family member against another household or family member.[4] For this study, however, we use a narrower definition of DV, limited to violence between intimate partners, where the perpetrator is an adult male. While some women physically abuse their intimate partners, the vast majority of those prosecuted for DV are male.[5]

DV offenders may be ordered to attend a DV treatment program as a condition of a sentence handed down by a judge or as a requirement of a deferred disposition.[6] Typically, the offenders are responsible for paying the costs of treatment. Based on a brief survey in Washington, we estimate the average cost of treatment to be $1,365 per person.[7]

Judges report two main reasons to order DV offenders to treatment: first, to hold offenders accountable for the crime for which they were convicted; and second, to reduce the likelihood of future crime through the anticipated rehabilitative effects of DV treatment. In a national survey of the courts, 75% of judicial officers who order DV treatment consider it to be a form of accountability; 90% also do so with the goal of rehabilitation.[8]

It is important to note that this report focuses solely on the question of "what works" to reduce recidivism—that is, the degree to which DV treatment rehabilitates offenders to reduce future crimes. We do not address the use of DV treatment as a form of accountability.

Legislative Study Direction

The 2012 Legislature directed the Institute to do three things:

1) In collaboration with the Washington State Gender and Justice Commission and experts on domestic violence, "...review and update of the literature on domestic violence perpetrator treatment, and provide a description of studies used in meta-analysis of domestic violence perpetrator treatment. The institute shall report on other treatments and programs, including related findings on evidence-based community supervision, that are effective at reducing recidivism among the general offender population."

2) "The institute shall survey other states to study how misdemeanor and felony domestic violence cases are handled and assess whether domestic violence perpetrator treatment is required by law and whether a treatment modality is codified in law."

3) "...report recidivism rates of domestic violence offenders in Washington, and if data is available, the report must also include an estimate of the number of domestic violence offenders sentenced to certified domestic violence perpetrator treatment in Washington state and completion rates for those entering treatment."

Engrossed Substitute House Bill 2363, Laws of 2012.

Current Washington State Laws and Rules on DV Treatment. Current Washington State criminal law and administrative rules specify aspects of what is called the "Duluth model" of DV treatment for state-certified DV perpetrator treatment programs. The laws and rules prohibit substitution of other non-Duluth approaches to DV perpetrator treatment. Specifically, certain approaches cannot be used in place of the Duluth model, including individual, couples, or family therapy; substance abuse treatment; or anger management.[9]

The Duluth model is a commonly used intervention throughout the United States, Canada, and Great Britain for males charged with misdemeanor domestic violence. The intervention is based on a model developed in Duluth, Minnesota, in the early 1980's. The treatment approach assumes that domestic violence "...is a gender-specific behavior which is socially and historically constructed. Men are socialized to take control and to use physical force when necessary to maintain dominance."[10]

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[4] RCW 26.50.010

[5] In Washington, from 2004–2006, 77% of DV offenders were male. See: George, T. (2012). *Domestic violence sentencing conditions and recidivism.* Olympia: Washington Center for Court Research, Administrative Office of the Courts.

[6] Ibid

[7] This is the middle of the range of costs based on a survey of seven treatment providers in Olympia, Seattle, Bellingham, Yakima, Spokane, and Moses Lake on June 2011. All offenders were on probation; program costs do not include the cost of probation.

[8] Labriola, M., Rempel, M., O'Sullivan, C., & Frank, P. B. (2007). *Court responses to batterer program noncompliance: A national*

[9] WAC 388-60 and RCW 26.50.150

[10] Ganley, A. (1996). Understanding domestic violence. In: W. Warshaw & A. Ganley (eds.), *Improving Health Care Response*

Further, the model assumes that DV does not result from mental illness, substance abuse, anger, stress or dysfunctional relationships.[11]

In this report, we review the evaluation literature on the degree to which the Duluth model, as well as other forms of DV treatment, impact recidivism.

METHODS

The Institute has previously published extensive analyses of "what works" in criminal justice and other policy areas.[12] To accomplish the current legislative assignment, we systematically reviewed the research literature on DV treatments. We located 34 studies from throughout the United States and Canada that evaluated the effect of DV group-based treatment for male offenders on recidivism.[13]

It is important to note that this study is a systematic review of the literature, and is not an evaluation of whether specific group-based DV programs for male offenders in Washington State affect recidivism. Our approach is to review the national and international research literature to provide insight on the likely effectiveness of DV programs in Washington. To date, unfortunately, programs in Washington State have not been rigorously evaluated.

Most of the studies (30 of 34) evaluated male-only group treatment. The remaining four studies concerned couples group treatment for couples where men were the abusers. We found no outcome evaluations of interventions for female batterers.

After locating these 34 evaluations, we then applied our standard research design criteria for inclusion in our analysis. We assessed whether each study met minimum standards of research rigor. These criteria gave us confidence that any changes in outcomes are caused by the interventions and were not due to unknown characteristics or motivational factors of the program participants.

Research design. To be included in our meta-analysis, studies must have used a comparison group similar to the treatment group. We preferred studies where offenders were randomly assigned to treatment or comparison conditions, but we also included "quasi-experimental" studies that used appropriate statistical controls.

Some studies excluded from the analysis compared those successfully completing treatment with those who dropped out. While such designs have their advocates,[14] these study designs cannot control for the motivational factors and other risk factors associated with treatment completion. Compared to completers, dropouts are less likely to be employed[15] or married,[16] and are more likely to have an extensive criminal history[17] or severe psychopathology.[18] All of these characteristics are risk factors for recidivism.[19]

We also required that studies provided enough information to create effect sizes based on "intention-to-treat." That is, we only included studies where outcome information was provided for all those assigned to the treatment, not just those who completed the program. We adopted this rule to avoid unobserved self-selection factors that distinguish a program completer from a program dropout, since these unobserved factors are likely to significantly bias estimated treatment effects. We included a study reporting on completers only if the demonstrated rate of program non-completion was very small (e.g. under 10%).

Population. Our legislative assignment directs us to focus on criminal DV offenders. Therefore, we excluded studies where subjects volunteered or were ordered to treatment by civil court, as is sometimes the case in child custody cases.

Outcomes. To be included in our analysis, studies must have reported measures of criminal

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to Domestic Violence (pp. 15-44). San Francisco: Futures Without Violence. Retrieved from http://www.futureswithoutviolence.org/userfiles/file/HealthCare/improving_healthcare_manual_1.pdf

[11] Ibid

[12] Lee et al., 2012

[13] The following rigorous evaluation was excluded from these analyses because it did not include a measure of DV recidivism: Chen, H., Bersani, C., Myers, S. C., & Denton, R. (1989). Evaluating the effectiveness of a court sponsored abuser *Journal of Family Violence, 4*(4), 309-322.

[14] Gondolf, E. W. (2012). *The future of batterer programs: Reassessing evidence-based practice.* Boston: Northeastern University Press.

[15] Bennett, L., Call, C., Flett, H., Stoops, C. (2005). *Program completion, behavioral change, and re-arrest for the batterer intervention system of Cook County Illinois: Final report to the Illinois Criminal Justice Information Authority.* Chicago: Illinois Criminal Justice Information Authority.

[16] Ibid

[17] Ibid and Hanson, R.K. & Wallace-Capretta, S. (2000). *A multi-site study of treatment for abusive men.* User Report 2000-05. Ottawa: Department of the Solicitor General of Canada.

[18] Gondolf, E. W. (1999). MCMI-III results for batterer program participants in four cities: less "pathological" than expected. *Journal of Family Violence*, 14(1), 1-17.

[19] Ibid and Hanson & Wallace-Capretta op. cit.

recidivism. We preferred information from official police or court records. Frequently, studies on DV treatment measured recidivism from victim reports. If no official records were available, we included such studies if researchers were able to reach most of the victims. One study met this criterion.[20]

Reliability of the Review. To assure an accurate assessment of each study, two Institute researchers reviewed every evaluation. We also engaged the assistance of an external reviewer with extensive experience conducting systematic reviews.[21] Each reviewer independently read and coded each study. Final decisions regarding inclusion of studies were determined by consensus.

Calculating Effect Sizes (ES). After screening the 34 studies of group DV treatment for the inclusion criteria, we identified nine rigorous evaluations to include in our analysis. We then calculated an effect size (ES) for each study. The ES is a measure of how large the effect of the treatment is relative to the comparison group. We then combined the results from multiple studies to estimate the overall average effect size of the studies. This "meta-analysis" gives increased statistical power and allows greater confidence in the average overall effect of the intervention on recidivism.[22]

Defining Promising Practice. The 2012 Legislature directed the Institute and the University of Washington's Evidence Based Practice Institute to develop definitions for "evidence-based," "research-based," and "promising" programs in the areas of children's welfare, mental health, and juvenile justice.[23] These definitions rank programs based on the strength of the evidence, with evidence-based programs considered to have the best evidence that the programs achieve desired results. Research-based programs have at least one rigorous evaluation but do not meet all criteria for evidence-based. "Promising" approaches are based on statistical analyses or a well-established theory of change. For all the studies reviewed in this analysis, we classified programs according to these definitions.

Collaboration

The Institute was directed to collaborate with the Washington State Gender and Justice Commission and experts on domestic violence. We met on four occasions with representatives of the Gender and Justice Commission. This report includes a statement by the Commission in Section III.

In early September 2012, we participated in the Seattle Domestic Violence Symposium. We also attended the annual conference of the Northwest Association of Domestic Violence Treatment Professionals (NWADVTP) in late August 2012, and met with representatives of NWADVTP on December 7, 2012. A statement from NWADVTP is included in Section IV.

Findings

Our primary charge was to examine the effectiveness of DV treatment. The legislative study direction included a requirement to examine supervision and other options for the general offender population; the Gender and Justice Commission also expressed interest in other approaches. Therefore, we expanded our review of the DV treatment literature and present our findings based on the type of treatment approach, as follows:

A. Group-based DV Treatment

B. Other Approaches to Reducing Recidivism by DV Offenders

C. Interventions for the General Offender Population that may Apply to DV Populations

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[20] Easton, C. J., Mandel, D. L., Hunkele, K. A., Nich, C., Rounsaville, B. J., & Carroll, K. M. (2007). A cognitive behavioral therapy for alcohol-dependent domestic violence offenders: An integrated substance abuse-domestic violence treatment approach (SADV). *American Journal on Addictions, 16*(1), 24-31.

[21] We contracted with Emily Tanner-Smith, Research Assistant Professor at the Peabody Research Institute and Department of Human and Organizational Development at Vanderbilt University. Dr. Tanner-Smith is currently the Associate Editor for the Methods Coordinating Group of The Campbell Collaboration, an international organization that prepares and disseminates systematic reviews in education, crime and justice, and social welfare.

[22] Following standard meta-analytic procedures, random effects inverse variance weights are used to calculate the weighted average effect size for each topic.

[23] The definition of "promising" is: a program or practice that, based on statistical analyses or a well-established theory of change, shows potential for meeting the "evidence-based" or "research-based" criteria, which could include the use of a program that is evidence-based for outcomes other than the alternative use. See: http://www.wsipp.wa.gov/rptfiles/E2SHB2536.pdf

A. Group DV Treatment

As mentioned, of the 34 studies of group treatment for DV offenders that we located, only nine studies met our inclusion criteria for analysis. Those nine studies include 11 effect sizes, shown in Exhibit 1.

In the table, negative effect sizes indicate that the program group had lower rates of recidivism than the comparison group. Thus, negative effect sizes indicate desirable outcomes for these programs.

The more negative the effect sizes, the greater the reduction in recidivism. For example, an effect size of -0.4 would indicate a greater reduction than an effect size of -0.2. Full citations for this group of studies are provided in Exhibit B1 in the appendix.[24]

Exhibit 1

Studies of DV Offender Group Treatment Included in the Meta-Analysis

Study	Location	Treatment Type	Treatment N	Duration	Comparison	Effect Size (p-value)* DV recidivism	Any recidivism
Davis et al., 2000a	Brooklyn	Duluth model	129	40 hrs over 26 wks	40 hr community service	-0.447 (p=0.01)**	N/A
Davis et al., 2000b	Brooklyn	Duluth model	61	40 hrs over 8 wks	40 hr community service	-0.091 (p=0.67)	N/A
Dunford, 2000a	San Diego Naval Base	Cognitive-behavior, focus on relationships, communication, empathy.	168	26 weekly sessions followed by 6 monthly sessions	No treatment	-0.066 (p=0.85)	N/A
Dunford, 2000b	San Diego Naval Base	Couples group therapy	153	26 weekly sessions followed by 6 monthly sessions	No treatment	-0.269 (p=0.50)	N/A
Easton et al., 2007	New Haven	Substance abuse treatment	29	12 weekly sessions	12-step program	-0.317	N/A
Feder, 2000	Broward County	Duluth model	227	26 weekly sessions	Probation only	-0.113 (p=0.68)	+0.320 (p=0.02)
Gordon, 2003	Virginia	Duluth model	132	20 or 24 wks	Probation only	+0.219 (p=0.20)	N/A
Harrell, 1991	Baltimore	Mixed, 82% were Duluth model	81	Varied 8 to 18 wks	Probation only	+0.490 (p=0.054)	N/A
Labriola et al., 2008	Bronx	Duluth model	173	26 weekly sessions	Probation only	+0.237 (p=0.12)	+0.089 (p=0.51)
Palmer et. al., 1992	Ontario Canada	Cognitive-behavioral, client-centered, focus on understanding violence, coping with conflict, self-esteem, relationships with women	30	10 weekly sessions	Probation only	-0.835 (p=0.06)	N/A
Waldo, 1988	East Coast US	Relationship enhancement therapy	60	12 weekly sessions	No treatment	-0.487 (p=0.20)	N/A

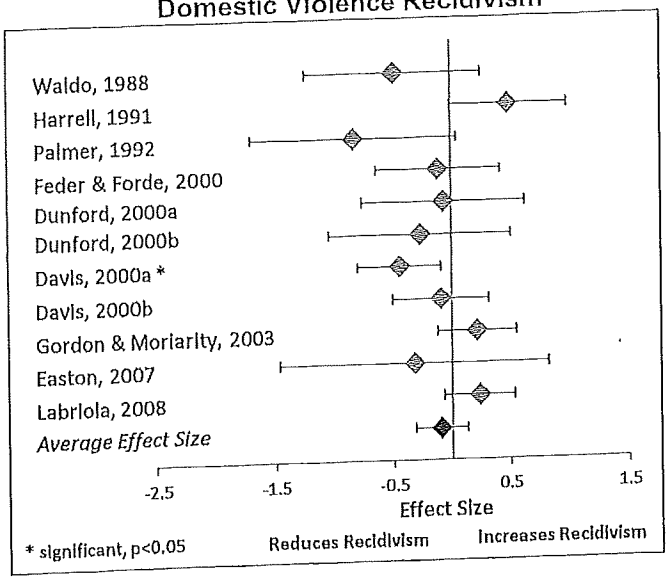
* p-values indicate the level of statistical significance. For example, a p-value of 0.05 indicates that five percent of the time we might expect to see the effect by chance
**Davis et al., 2000a showed a statistically significant impact on reduction.

[24] The 25 studies excluded from the analysis are described in Exhibits B2 and B3 in the Appendix.

Exhibit 2 displays the effect sizes (ES's) for each study and the combined ES for this group of studies.[25] In this "forest plot," the effect size is displayed along the horizontal axis. The diamonds show the effect size calculated for each study and the horizontal bars show the 95% confidence intervals—the statistical range of values that would contain the actual "true" value. If a study demonstrates a statistically significant effect, the confidence intervals would not include zero. In the collection of 11 effects included here, one (Davis, 2000a) is statistically significant.

We calculated a meta-analytic average for this combined group of studies—shown as the "average effect size" in Exhibit 2. The average effect size is not statistically different from zero. Thus, from this review of the most rigorous evaluations of group-based DV treatment, we would conclude that this form of treatment has no effect on DV recidivism.

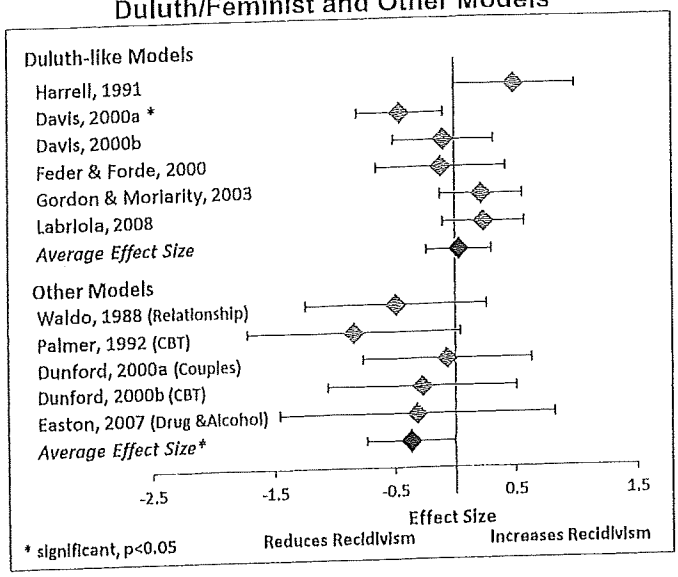
Exhibit 2
Effect Sizes for Group DV Treatment
Domestic Violence Recidivism



We then analyzed this group of studies to determine whether certain group-based approaches are more effective in reducing DV recidivism than others. We divided the 11 effect sizes into two categories: treatments based on the Duluth model, and those that used other methods.

The Duluth Group-based DV Treatment. We attempted to identify whether the treatments assessed in the 11 effect sizes were similar to the Duluth model. In some studies, the Duluth model was specifically identified. We also considered programs to be similar to Duluth if the study authors said the curriculum included "power and control" dynamics, "sex role stereotyping," or gender-based values. Six of the 11 effect sizes assessed Duluth-like programs. We analyzed separately the results of these six effect sizes and found that, on average, programs using Duluth-like models had no effect on recidivism (see the upper panel in Exhibit 3); therefore, this approach cannot be considered "evidence-based" (or research-based or promising).

Exhibit 3
Effects Sizes for Group DV Treatment
Duluth/Feminist and Other Models



Other Group-based DV Treatments. Of the 11 effect sizes, five were for rigorous evaluations of non-Duluth group-based DV treatment. These other treatments are a collection of various approaches, described on the next page. As displayed on the lower panel of Exhibit 3, individually, all of the programs reduced DV recidivism, but none of the alternative approaches had sample sizes large enough to achieve statistical significance.

When the studies are combined in a meta-analysis, however, the resulting larger sample size increases the ability to draw statistical conclusions. Thus, when these other non-Duluth models are analyzed as a whole, the combined effects indicate a statistically significant reduction in DV recidivism (the lower "average effect size" in Exhibit 3). The average effect was a 33% reduction in domestic violence recidivism.[26]

[25] Eleven effect sizes are displayed because two of the nine studies included more than one treatment modality.

[26] George, T. (2012). The Washington Center for Court Research indicates that 45% of all DV offenders commit another DV crime within five years. When the average effect size for the other (non-

It is important to note that some of these treatments are not appropriate for every offender. For example, substance abuse treatment would not be the treatment of choice for a DV offender who does not have substance abuse problems. Also, as noted earlier, under Washington State law, these treatments cannot be substitutes for Duluth-like DV treatment.

The "other models" shown in Exhibit 3 are described below.

- *Cognitive behavioral therapy.* Two studies (Palmer, 1992, and Dunford, 2000b) reported on similar cognitive-behavioral group treatments for DV offenders with emphasis on improving empathy, communication, and relationships with women.

- *Relationship enhancement.* One study (Waldo, 1988) examined men's groups for DV offenders where the focus is on improving their intimate relationships.

- *Substance Abuse Treatment.* The use of alcohol and/or other drugs frequently occur on the same day as domestic violence abuse.[27] We found one rigorous evaluation of a substance abuse treatment designed specifically for DV offenders (Easton, 2007).

- *Group couples counseling for DV offenders.* One approach to treatment is couples group counseling for couples wishing to stay together. One study included in the meta-analysis (Dunford, 2000a) showed a non-significant reduction in recidivism.

Duluth) DV treatments is applied to this recidivism rate, the DV recidivism rate reduces to 30%. This 15 percentage point reduction translates into a 33% (15/45) reduction in DV recidivism.

[27] Fals-Stewart, W., Golden, J., & Schumacher, J. A. (2003). Intimate partner violence and substance use: A longitudinal day-to-day examination. *Addictive Behaviors, 28*(9), 1555-1574; and Friend, J., Langhinrichsen-Rohling, J., & Eichold, I. I. B, H. (2011). Same-day substance use in men and women charged with felony domestic violence offenses. *Criminal Justice and Behavior, 38*(6), 619-633.

B. Other "Promising" Approaches to Reducing Recidivism by DV Offenders

The primary focus of our legislative direction was to search for evidence of effectiveness of DV treatment programs. The treatments just described are those with rigorous evaluations. We also searched the literature for other treatments not yet evaluated, as well as justice system approaches for DV cases.

The approaches, listed in Exhibit 4 (next page) and described in this section, can only be regarded as "promising," not evidence- or research-based.

Other Promising Approaches for DV Treatment. The following promising treatment approaches have not yet been evaluated.

- *Addressing Psychopathology.* In a multi-site study of DV offenders, 25% exhibited severe psychopathology.[28] Two mental disorders (described below) have been associated with severity of domestic violence.

  (1) *Borderline Personality Disorder (BPD).* A subset of DV offenders have characteristics associated with BPD.[29] Persons with BPD "attach themselves to others, then become intensely angry or hostile when they believe they are being ignored or mistreated."[30] Dialectical Behavior Therapy (DBT) is an evidence-based treatment[31] for BPD that is sometimes used with DV offenders exhibiting BPD symptoms.[32] To date, however, the effects on DV recidivism have not been evaluated.

  (2) *Posttraumatic Stress Disorder (PTSD).* Symptoms of PTSD are more common in abusive men than in non-abusive men.[33] In a sample of active military and veterans in a DV treatment program, greater severity

[28] E.W. Gondolf, E. W. (1999). MCMI-III results for batterer program participants in four cities: less "pathological" than expected. *Journal of Family Violence, 14*(1), 1-17

[29] For example, see: Dutton, D.G. & Starzomski, A. (1993) Borderline personality in perpetrators of psychological and physical abuse. *Victims and Violence, 8*(4), 327-337.

[30] Morrison, J. (1995). *DSM-IV made easy* (p. 478). New York: The Guilford Press.

[31] National Registry of Evidence-Based Programs and Practices. http://www.nrepp.samhsa.gov/ViewIntervention.aspx?Id=36

[32] Fruzzetti, A.E. & Levensky, E.R. (2000). Dialectical behavior therapy for domestic violence. *Cognitive and Behavioral Practice, 7*, 435-447; and Waltz, J. (2003) Dialectical behavior therapy in the treatment of abusive behavior. *Journal of Aggression, Maltreatment & Trauma, 7*(1)(2), 75-703.

[33] Dutton, D. (1995). Trauma symptoms and PTSD-like profiles in perpetrators of intimate violence. *Journal of Traumatic Stress, 8*(2), 299-316.

of symptoms of PTSD was associated with increased severity of DV.[34] While there are treatments that can reduce PTSD symptoms,[35] we were unable to locate any studies of PTSD treatment specifically for DV offenders.

- *Mind-Body Bridging*. This approach focuses on the mind-body state of the offender before his aggressiveness, which may be caused by lack of awareness and inability to modulate psychological and physical arousal.[36]

- *Moral Reconation Therapy (MRT) for DV*. MRT is one of several cognitive behavioral programs that have been shown to reduce recidivism; it is currently used by the Washington State Department of Corrections (DOC) for the general offender population. There is now a version of MRT specifically for DV offenders, but it has not yet been evaluated.[37]

- *Interactive journaling: Stopping Abuse for Everyone (SAFE)*.[38] Washington State DOC currently uses several cognitive-behavioral programs for general offenders, including an interactive journaling program, "Getting It Right!" The company that produces "Getting It Right!" has developed a version specifically for DV offenders. An evaluation of SAFE's effect on recidivism is currently underway.

- *Faith-based treatment for DV offenders*.[39] Religious individuals may turn to their churches for help in resolving family violence. Although faith-based programs for DV offenders exist, to date there have been no evaluations on the effects of such programs on DV recidivism.

Judicial System Approaches to DV. There are also criminal justice system approaches to reducing DV recidivism and increasing victim safety. The first four system options shown in Exhibit 4 (DV courts, judicial monitoring, specialized supervision, and GPS monitoring) have had a least one rigorous evaluation examining whether recidivism is reduced. The last two (Coordinated Community Response and DV risk assessment) have not been rigorously evaluated regarding their effect on recidivism. Each of these approaches is described below.

- *DV courts*. DV courts are specialized courts with separate calendars for DV cases and specially trained judicial officers. DV courts also frequently coordinate with victim advocacy services. To date, there have been only two rigorous evaluations of domestic violence courts, one for felons and another for misdemeanants. The evaluation of the felony court reported any new arrests (not specific to DV) and found an increase in re-arrests for those served by the DV court.[40] The study on the misdemeanor court reported a significant decrease in DV recidivism.[41]

- *Judicial monitoring* involves more frequent judicial contact, often within the context of DV court. A single rigorous evaluation of enhanced monitoring in a misdemeanor DV court found no effect on either re-arrests for any crime or re-arrest for DV.[42]

- *Specialized DV community supervision*. A single study on a specialized DV probation unit found that this approach reduced recidivism for lowest risk offenders, but had no effect on high risk offenders.[43]

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[34] Gerlock, A. (2004). Domestic violence and post-traumatic stress disorder severity for participants of a domestic violence rehabilitation program. *Military Medicine, 169*(6), 470-474.
[35] Lee et al., 2012
[36] Tollefson, D. R., Webb, K., Shumway, D., Block, S. H., & Nakamura, Y. (2009). A mind-body approach to domestic violence perpetrator treatment: Program overview and preliminary outcomes. *Journal of Aggression, Maltreatment & Trauma, 18*(1), 17-45.
[37] See https://www.ccimrt.com/materials/domestic-violence for more information.
[38] Dwayne Young , personal communication, September 14, 2012. The Change Companies is currently evaluating a modification of its offender program for domestic violence offenders. See: http://www.changecompanies.net/
[39] Nason-Clark, N., Murphy, N., Fisher-Townsend, B., & Ruff, L. (2003). An overview of the characteristics of the clients at a faith-based batterers intervention program. *Journal of Religion and*

[40] Newmark, L., Rempel, M., Diffily, K., Kane, K.M. (2001). *Specialized felony domestic violence courts: Lessons on implementations and impacts from the Kings County experience.* Washington DC: Urban Institute.
[41] Gover, A.R., MacDonald, J.M., Alpert, G.P., & Geary, I.A., Jr. (2003). *The Lexington County domestic violence courts: A partnership and evaluation.* National Institute of Justice Grant 2000-WT-VX-0015.
[42] Labriola, M., Rempel, M., & Davis, R. C. (2008). Do batterer programs reduce recidivism? Results from a randomized trial in the Bronx. *Justice Quarterly, 25*(2), 252-282.
[43] Klein, A. R., Wilson, D., Crowe, A. H., & DeMichele, M. (2005). *Evaluation of the Rhode Island Probation Specialized Domestic Violence Supervision Unit.* National Institute of Justice Grant 2002-WG-BX-0011.

Exhibit 4

Other Promising Approaches to Reducing Domestic Violence Recidivism

None of these approaches can be regarded as evidence-based at this time because there is insufficient rigorous research, but each approach meets the definition of a promising practice.

Type of intervention	Specific to a sub-population?	Number of rigorous evaluations?	Findings from available credible evaluations
Treatments			
Addressing psychopathology: Dialectical Behavior Therapy for Borderline Personality Disorder (BPD)	Yes (those with BPD)	None	N/A
Addressing psychopathology: Posttraumatic Stress Disorder (PTSD)	Yes (those with PTSD)	None	N/A
Mind-Body Bridging	No	None	N/A
MRT for DV	No	None	N/A
Interactive Journaling	No	None	N/A
System level			
DV Courts	No	Two	Mixed
Judicial monitoring	No	One	Small impact (reduced recidivism)
Specialized supervision	No	One	Mixed
GPS monitoring	Yes (those with protection orders)	One	Small impact (reduced recidivism)
Coordinated Community Response	No	None	N/A
Risk assessment	No	None	N/A

- *Global Positioning System (GPS) monitoring.* The use of GPS during the pre-sentence period allows better enforcement of court orders of protection. GPS monitoring also has the capability to quickly inform victims via text message if the offender ventures into locations prohibited by the order. In a multi-site study, in one site, DV recidivism was measured. At this same site, DV recidivism decreased. The study also found that arrests during the pre-trial period increased, which may indicate improved victim safety.[44]

- *Coordinated Community Response (CCR).* The Duluth treatment model was developed as part of a larger community response to DV. CCR involves coordinated response to DV with collaboration among criminal justice agencies (police, courts, and prosecutors), human service agencies, and community corrections.[45] It is thought that such coordination provides support for victims and makes clear that the community will hold DV offenders accountable for their actions. To date there have been no rigorous evaluations of CCR (see list of excluded studies in Exhibit C3 in the Appendix).

- *Risk assessment.* In recent years, several tools have been developed to assess the risk of DV re-offense by DV offenders. Typically, police officers at the scene use the assessment to collect information about the DV offender. This information is used by police agencies, prosecutors, the defense bar, and judicial officers to help decide how to proceed with each

[44] Erez, E., Ibarra, P.R., Bales, W.D., Gur, O.M. (2012) *GPS Monitoring technologies and domestic violence: An evaluation study.* Report to the National Institute of Justice, Document 238910.

[45] Hart, B. J. (2005). *Coordinated community approaches to domestic violence.* Minnesota Center Against Violence and Abuse. Retrieved from http://www.mincava.umn.edu/documents/hart/cca/cca.pdf

case. Two such tools are in various stages of implementation and validation in Washington State (in Thurston County and the City of Seattle).

C. Interventions for the General Offender Population that May Apply to DV Populations

Evidence from Washington State suggests that many DV offenders commit crimes other than DV. A study of DV offenders in Seattle found that 60% of recidivism was for crimes other than DV.[46] Two recent studies from the Washington State Center for Court Research found that among DV offenders who re-offended, a large proportion did not have a new DV offense. For example, in one study, 70% of DV offenders re-offended; but only 45% had a new DV court case.[47]

The Institute was directed to report on "other treatments and programs, including related findings on evidence-based community supervision, that are effective at reducing recidivism among the general offender population." The Institute has previously published extensive analyses of "what works" to reduce the recidivism rate in the general offender population.[48] The purpose of this section is to describe elements of the Institute's previous work that may be relevant for policy focused on DV offenders.

Exhibit 5 summarizes those previous analyses,[49] and provides information on the number of studies included, the number of participants in the treatment group, the average effect size for each type of intervention, and the p-value. All but two of these interventions (case management without swift and certain sanctions, and other drug treatment – non-therapeutic communities) were associated with statistically significant reductions in recidivism.

Exhibit 5

Summary of WSIPP Reviews of Interventions for Offenders in the Community

Interventions for Adult Criminal Offenders	Last Updated	Number studies	Number in Treatment Groups	Effect Size	P-value
Offender Re-entry Community Safety Program (Dangerously mentally ill offenders)	Apr-12	1	172	-0.756	<0.001
Drug Offender Sentencing Alternative (drug offenders)	Apr-12	1	323	-0.272	0.013
Supervision with Risk Need and Responsivity Principles (moderate and high risk)	Apr-12	6	3,024	-0.307	<0.001
Electronic Monitoring (radio frequency or global positioning systems)	Apr-12	16	18,263	-0.165	<0.001
Mental Health Courts	Apr-12	6	1,424	-0.238	<0.001
Drug Courts	Apr-12	67	27,872	-0.249	<0.001
Drug treatment delivered in the community					
Therapeutic communities	Dec-12	8	5,043	-0.147	0.001
Other drug treatment (non-therapeutic communities)	Dec-12	9	109,461	-0.048	0.221
Case management for substance-abusing offenders					
Swift and certain sanctions	Dec-12	7	4,004	-0.232	0.003
Not swift and certain	Dec-12	13	2,786	-0.074	0.457
Drug Offender Sentencing Alternative (Property offenders)	Apr-12	1	264	-0.272	0.015
Cognitive Behavioral Therapy (moderate and high risk)	Apr-12	38	31,775	-0.144	0.001
Work Release	Apr-12	7	16,406	-0.084	0.029
Employment Training/Job Assistance	Apr-12	16	9,217	-0.074	0.020

[46] Babcock, J. C., & Steiner, R. (1999). The relationship between treatment, incarceration, and recidivism of battering: A program evaluation of Seattle's coordinated community response to domestic violence. *Journal of Family Psychology, 13*(1), 46-59.

[47] George, T. (2012). *Domestic violence sentencing conditions and recidivism.* Olympia: Washington Center for Court Research, Administrative Office of the Courts.

[48] Lee et al., 2012

[49] Lee et al., 2012; and Drake, E. (2012). *Chemical Dependency Treatment for Offenders: A Review of the Evidence and Benefit-Cost Findings* (Document No. 12-12-1201). Olympia: Washington State Institute for Public Policy.

We also provide more detail on community supervision below, as requested by the legislature.

Community Supervision of General Adult Offender Populations

To date, we have systematically reviewed[50] three areas within the adult supervision literature to determine "what works":

- Intensive supervision—surveillance only;
- Intensive supervision—with treatment; and
- Supervision using the "Risk Need Responsivity" model.

Our review found that intensive supervision without treatment has no detectable effects on recidivism rates. When evidence-based treatment is added to intensive supervision, however, we find a recidivism reduction.

In addition to our reviews of intensive supervision with and without treatment, we analyzed an emerging literature on a model of supervision that utilizes the principles of "Risk Need Responsivity" (RNR). This model was first developed by Canadian researchers in 1990 and is defined as follows:[51]

- *Risk principle*—utilize interventions commensurate with an offender's risk for re-offense.
- *Need principle*—target offender's criminogenic needs such as anti-social attitudes or substance abuse; and
- *Responsivity principle*—utilize interventions geared toward the offender's abilities and motivation (generally cognitive behavioral or social learning interventions).

Exhibit 6 displays the main findings from our literature review of community supervision of general adult offenders. The exhibit shows the percentage change in crime outcomes for each of the three types of supervision. We find that intensive supervision with surveillance only has a 0.16% increase in recidivism, while intensive supervision with evidence-based treatment reduces recidivism, on average, by 10%. When community supervision is delivered with the RNR model, we find a larger (16%) reduction in crime outcomes.

Exhibit 6
Supervision for Adult Offenders: Effect on Crime

Supervision Strategy	Number of Studies	N	Effect Size	p-value	Percentage Change in Crime*
Intensive Supervision Probation/Parole (surveillance only)	14	1,699	+.004	0.951	+0.16%
Intensive Supervision Probation/Parole (with treatment)	17	3,078	-.205	0.004	-10%
Supervision with Risk Responsivity Need model	6	3,024	-.303	0.000	-16%

* We calculate the percentage change in crime as an average reduction over a long-term follow-up of 15 years.
Citations of studies used in these analyses are provided in Exhibits D1, D1, and D3 in the appendix.

[50] Drake, E. & Aos, S. (2012). *Confinement for Technical Violations of Community Supervision: Is There an Effect on Felony Recidivism?* (Document No. 12-07-1201). Olympia: Washington State Institute for Public Policy.
[51] Andrews, D., Bonta, J., & Hoge, R. (1990). Classification for effective rehabilitation: Rediscovering psychology. *Criminal Justice and Behavior, 17*, 19-52.

Summary of Findings

Based on six rigorous outcome evaluations of group-based DV treatment for male offenders, we conclude that the Duluth model, the most common treatment approach, appears to have no effect on recidivism. This updated finding is consistent with our (and others') previous work on this topic.[52] There may be other reasons for courts to order offenders to participate in these Duluth-like programs, but the evidence suggests that DV recidivism will not decrease as a result.

There may be other group-based treatments for male DV offenders that effectively reduce DV recidivism. We found five rigorous evaluations covering a variety of non-Duluth group-based treatments. On average, this diverse collection of programs reduced DV recidivism by a statistically significant 33%. Unfortunately, these interventions are so varied in their approaches that we cannot identify a particular group-based treatment approach to replace the Duluth-like model required by Washington State law.

We also searched for evaluations of other approaches to reducing DV recidivism. Unfortunately, we did not find enough credible studies to categorize any specific approach as evidence-based. We did, however, identify a number of approaches to reducing DV recidivism that could be considered promising.

Some strategies that are effective for criminal offenders in general may work for DV offenders as well. The Institute previously published extensive analyses of "what works" to reduce the recidivism rate in the general offender population.[53] Many of these other approaches reduce recidivism and save more money than they cost. The same approaches, if implemented for DV offenders, may also reduce recidivism. Until these approaches are tested and evaluated with DV offenders, however, this can only be regarded as a tentative assumption.

It should also be emphasized that none of the rigorous studies in our review was conducted in Washington State. If the legislature wishes to learn whether Washington's programs are more effective than the non-Washington programs reviewed here, we recommend that rigorous outcome evaluations be conducted.

Treatment providers in Washington State report that, in addition to the legally required Duluth-like group-based model, they also provide other types of treatment, as described in Section IV of this report. Those other treatments could be assessed in a rigorous outcome evaluation. Through a series of outcome evaluations of Washington programs, it may be possible for Washington State to identify an evidence-based DV strategy.

[52] Lee et al., 2012; Klein, 2009; Feder & Wilson, 2005; and Babcock et al., 2004
[53] Lee et al., 2012

II. DV TREATMENT IN OTHER STATES

We surveyed other states to determine whether they mandate a specific type of treatment and other aspects of treatment. We found that 44 of 50 states currently have legal guidelines for DV treatment. In 28 states, standards for DV treatment specify the Duluth model by name, or require that power and control dynamics—central to the Duluth model—must be included in the treatment curriculum. In 12 states, the guidelines are less specific in mandating a curriculum or approach. The remaining four states have standards regarding intake and assessment but do not specify treatment type.

Appendix D provides the details of our survey methods and a state-by-state comparison of requirements for DV treatment.

III. STATEMENT OF THE WASHINGTON STATE SUPREME COURT GENDER AND JUSTICE COMMISSION

The Washington State Legislature passed HB 2363 which directs the Washington State Institute for Public Policy to:

- assess recidivism by domestic violence offenders
- examine effective community supervision practices as it relates to the WSIPP's findings on evidence-based community supervision; and
- assess domestic violence perpetrator treatment.

HB 2363 also directs WSIPP to collaborate with the Washington State Supreme Court Gender and Justice Commission. The intent of this collaboration is an acknowledgement of the challenges and complexity of reducing recidivism of domestic violence perpetrators so victims are safer and the pattern of abuse is severed. It is a community problem requiring a coordinated systemic problem solving approach. As Dr. Thomas George states in his report, *Domestic Violence Sentencing Conditions and Recidivism*, "Over the last few decades, a wide variety of statutory, procedural, and organizational reforms have been enacted throughout the legal system to combat the widespread and destructive effects of domestic violence."

While efforts attempting to identify effective domestic violence treatment programs should be applauded, a quandary still remains for the court system. Research hasn't identified which perpetrators need lengthy treatment and which ones don't, as well as who is amenable to treatment and who isn't. There is wide variance in the conditions set by the court so it has been difficult to determine the combination of conditions that will be the most effective in reducing recidivism. Thus, judicial officers are left unclear about what sentencing conditions to impose.

Dr. George researched the effect of a variety of sentencing conditions in a multitude of combinations. He found that "[f]rom imposing only fines and/or proscriptions to crafting sentences that involve fines, proscriptions, jail, assessment, treatment, and probation, little consistency exists both within and across jurisdictions." He concludes that this suggests a "lack of clarity and consistency in goals underlying domestic violence sentencing and reflects the ambiguous relationships between goals and sentence conditions. It highlights the lack of research evidence on successful approaches to reducing recidivism upon which judicial officers could base their decisions."

Dr. George's work reflects the legislative mandate that WSIPP "must collaborate" with the Commission. Because of the complexity of domestic violence, the solution is also complex and multifaceted. The HB 2363 report to the legislature must include this reality. More work is needed in this area to determine what role the courts can play in changing abusive behavior so that those victimized by it can feel safe.

Additional work needs to be done in exploring the potential combinations of sentencing conditions that seem to have a positive effect on recidivism and what resources are required by courts to implement these sentencing conditions. Currently, researchers are exploring the impact of judicial monitoring on reducing recidivism. Limited work has been done on identifying the different condition options and which combinations of conditions will be most effective. With the support of the legislature, the Commission is prepared to begin this work for Washington State.

All of the above addresses the "must collaborate" language in HB 2363. The Commission builds its work from the end of the research conducted by WSIPP. Our work will focus on identifying the policies and practices instituted within the court setting that have promise in reducing recidivism in domestic violence cases and as a result enhance safety for the victims.

IV. NORTHWEST ASSOCIATION OF DOMESTIC VIOLENCE TREATMENT PROFESSIONALS (NWADVTP) POSITION PAPER REGARDING DOMESTIC VIOLENCE TREATMENT IN WASHINGTON

This is in response to the research and meta-analysis required by RCW 26.50.800, which WSIPP, the Washington State Institute for Public Policy, has been conducting to evaluate the effectiveness of domestic violence perpetrator treatment in our state. There has been talk in some circles of turning over clinical work with perpetrators to the Department of Corrections Probation Officers, and local probation departments, or sending domestic violence perpetrators to short term anger management type programs. Another option being talked about is jail time for DV offenses with no other intervention. If these changes were to occur, it would effectively remove current Washington State Certified Domestic Violence Perpetrator Programs from providing treatment services to court ordered offenders. State Certified programs meet or exceed 25 pages of regulations in WAC 388-60 designed to maximize victim safety and perpetrator accountability. Our concern is that the manner in which the research is being conducted leads to erroneous conclusions. Those conclusions can be the basis for very dangerous policy decisions that undermine the safety of domestic violence victims and the accountability of perpetrators.

1. **Professional, independent review of the Meta-Analysis and other research required by RCW 26.50.800.** The NWADVTP has contacted professional domestic violence researchers to conduct an independent review of the research, and meta-analysis that is being conducted by Marna Miller, PhD and her team at WSIPP. We have grave concerns about a meta-analysis that only considers a dozen random controlled studies while excluding scores of well conducted, peer-reviewed research projects that show the effectiveness of Domestic Violence Treatment. Further, research that only focuses on legal recidivism misses a more complete picture of how peoples' lives are positively affected by a well-coordinated community response to domestic violence that includes a strong clinical perpetrator treatment component. Though WSIPP believes its standards for evidence lead to more reliable results, we do not believe that the methodology employed by WSIPP can take stock of the complexities of Domestic Violence. The idea of turning over Domestic Violence Treatment to the Department of Corrections and local probation departments is an idea that has not been adequately researched or discussed by all concerned parties. And without such dialogue and research, such a shift in policy can have dangerous and unexpected results.

We believe that victims truly can be safer with quality perpetrator treatment, and we believe that the best research bears this out. Community Corrections Officers and Probation Officers do a great job, but they do not have the clinical background and training to provide effective treatment to domestic violence offenders.

The professionals that we have contacted for review are: Eric Mankowski, PhD, Portland State University; Donald Dutton, PhD, University of British Columbia, Canada; and Edward Gondolf, PhD, University of Indiana.

2. **Domestic Violence is not a simple issue.** Most cases are very complex with many offenders that we see in treatment presenting with multiple issues. The current standards outlined in WAC 388-60 give us minimum guidelines for treatment, and are up for review. Around 80 % or so of our offender clients have Chemical Abuse/Dependency issues at some level. Approximately 1/3rd of offender clients have some Mental Health issues including personality disorders. Most offender clients have Power & Control issues, and underlying those issues are:

a. Attachment Disorders.
b. Toxic Shame/Guilt from childhood.
c. Trauma issues from physical, emotional, and sexual abuse as a child.
d. Trauma issues and PTSD from War, and Family of Origin.
e. 85% of male offenders, and close to 100% of female offenders have experienced or witnessed Domestic Violence in their Families of Origin.
f. Dependency/Co-Dependency issues.
g. Fear/Insecurity/Low Self-Esteem issues.
h. Many offender clients lack life skills, and coping skills.
i. Lack of emotional development, emotionally stunted.
j. Externally focused orientation to life with little, if any, internal focus.

It has been found with most offenders that there is a large amount of denial, minimization and blaming that takes a considerable amount of time to work through. It often takes around three months or so of weekly treatment sessions to allow for a reduction in denial, minimization, and blaming. The above listed issues become a part of the offender's treatment plan. Those offenders with multiple issues as indicated above may need more than one year to address them effectively. If the above issues are not adequately addressed in treatment, the violence is likely to continue and new generations will be exposed to more violence. Short term interventions do not provide enough time or therapy to work through basic issues of denial, minimization or blaming, much less the other pieces necessary for significant and lasting changes in behavior. Arresting, and prosecuting without follow up intervention only aggravates the situation by putting the victims in more danger.

3. **An effective Coordinated Community Response to Domestic Violence** requires that all parties involved in Domestic Violence intervention communicate, and cooperate with each other on a regular on-going basis. The major components of a Coordinated Community Response have historically been the Criminal Justice System, Victim Advocacy Services, and Domestic Violence Treatment Providers. There have been others in the community that have also been a part of this response such as Faith Based Communities, Employers, Violent Crime Victims Advocates, and others providing adjunct services like Chemical Dependency Treatment, Mental Health Services, Non-Violent Parenting Programs, etc.

Most cities, and counties around the State of Washington have meetings in which the members of the Coordinated Community Response come together, at least once per month, to discuss issues with services that are needed in those communities. Those Domestic Violence Intervention Committees (DVIC's), Taskforces, or Commissions have helped to keep the Coordinated Community Response moving in a positive, healthy direction. Many of these groups have been meeting for many years. One of the oldest groups is the Tacoma/Pierce County DVIC which has been meeting regularly since 1989

Over the past few years, we have seen a deterioration of some of those groups, and the overall effectiveness of a Coordinated Community Response in many communities around the State of Washington due in part to the economy and shrinking resources. This deterioration has put more victims of domestic violence at risk, and our overall numbers of domestic violence crimes in the State of Washington have been steadily increasing since 2008 according to WASPC statistics.

We do realize that financial concerns and other priorities have contributed to the deterioration of the Coordinated Community Response. In some communities key players in the Coordinated Community Response are volunteering their time to continue the meetings that are so necessary in maintaining an active Coordinated Community Response to Domestic Violence.

We believe that the right of all human beings to live safely, and peacefully should be the number one priority in all our communities. We need to not lose sight of our priorities if we are to help keep victims safe.

4. **RCW 26.50.150 and WAC 388-60 set the minimum standards for Domestic Violence Treatment.** Certified Domestic Violence Perpetrator Treatment Programs are mandated to adhere to WAC 388-60, but they also have some leeway as to how these standards are implemented by programs. This is as it should be so that offenders can choose a program that fits their needs as is regulated by Federal Statute.

Washington State Department of Health and other regulatory agencies have never been allowed to show preference of one mode of therapy over another. Such decisions are left up to the professionals providing the services, as long as the requirements of the statutes are fulfilled.

At times, some people have promoted specific models of treatment and modes of therapy implying that somehow one is better than another. There is little evidence to prove their case. It is more likely that the therapist-client therapeutic bond would be a better indicator of the client's success in making behavioral change than what mode of therapy is being employed. It has been effectively shown that punitive forms of treatment do not work as they interfere with the establishment of a therapeutic bond, and they model the same inappropriate behaviors that we are attempting to have our client's correct in their own lives.

Many certified programs in the State of Washington use a mode or model of therapy that is Cognitive Behavioral Based with some other aspects of other models included as well. Most programs use a process oriented group therapy that allows for clients to process their issues in a group setting. There are also some culturally relevant treatment programs that include culturally specific elements and language into the treatment process. There are culturally relevant programs for Spanish Speaking Cultures, Native American Cultures, Russian-Ukrainian Cultures, and Afro-American Cultures.
Some of the modes of therapy used in treatment programs around the State of Washington include, but are not limited to:

a. Cognitive Behavioral Therapy (CBT).
b. Reality Therapy, and other versions of Reality type Therapy.
c. Developmental Therapy.
d. Adlerian Therapy.
e. Transpersonal Therapy.
f. Moral Reconation Therapy (MRT).
g. Culturally Relevant Therapies.
h. Trauma-informed Therapies.

There are also some adjunct types of therapy in addition to Domestic Violence Treatment that are beneficial to the success of our clients, such as:

a. Trauma Reduction Therapies (EMDR, Hypnotherapy, NLP, etc.).
b. Chemical Dependency Treatment and 12 Step Program Participation.
c. Alanon, Co-Dependency Anonymous, Adult Children of Alcoholics, Sex and Love Addicts Anonymous, as an adjunct or aftercare program, etc.
d. Mental Health Counseling/Medication.
e. Individual Therapy for PTSD, Personality Disorders, etc.

Most Domestic Violence Treatment Programs in the State of Washington require clients to complete homework assignments. Some of the assignments may include:

a. Writing and presenting of Life Story to the group.
b. Empathy Letter to the victim/victims.
c. Reports on certain topics/books pertinent to the client's recovery.
d. Recovery Plans/Safety Plans.
e. Cultural Stories to present to group.
f. Ceremonies/rituals to make change and reduce violence.
g. Anger and Control logs.
h. and many other types of assignments pertinent to the clients recovery.

Domestic Violence Treatment Programs have to address the serious problem of relapse of Chemical use as well as Behavioral Relapse. Though relapse is not a requirement for clients going through treatment, it seems to be problematic for some of our clients. This needs to be taken into consideration when doing research about recidivism. Some clients seem to need to prove to themselves that they have a problem. Relapse tends to happen for some clients before they make real lasting change. So, some clients will have their programs extended or re-start treatment more than once in some cases, and make several trips to see the judge or probation officer for violations of their agreement or for new offenses. Domestic Violence Treatment and lasting recovery from the perpetration of violence is a process that is on-going for the rest of the client's life. We need to realize that it is a process, and not a one time or short term event.

5. **Domestic Violence Treatment does work.** When there is a solid Coordinated Community Response treatment works very well for many people. Most treatment providers know this. It's why we continue to do this difficult and often thankless work. Providers are encouraged to have some way of measuring outcomes with their programs. Some programs have well thought out methods of tracking client outcomes. There has not been much real research done on treatment programs in the State of Washington. There needs to be quality research on all available programs to clearly see the validity and effectiveness of Domestic Violence Treatment. Most research has been done on other programs outside the State of

Washington with attempts to compare them to what we do in Washington. Not all programs are the same in length, content, or structure.

6. **Short term CCAP/MRT type programs have not been adequately researched to show their effectiveness in addressing Domestic Violence issues.** Some short term programs that have cropped up in the State of Washington have not been shown to be effective for long-term recovery from violence and abuse. Some programs see an offender anywhere from one or two sessions to maybe 20 sessions with no consistency in length or content. Many of these types of programs do not have time to address issues of denial, minimization, and blaming effectively, and they certainly don't have time to address the myriad of other issues. There seems to be a movement among some judges and attorneys to find different ways to address Domestic Violence issues. Looking for ways to improve the quality of Domestic Violence Intervention is what we all want, but without a solid understanding of the complexities of Domestic Violence we can end up with simplistic, ineffective solutions to very complex issues.

7. **What we see as valid outcomes of DV Treatment, and possible outcome based evaluations.** In addition to completing all of the requirements of WAC 388-60 and the treatment program contract, some programs around the state have developed tools to assist in measuring outcomes of perpetrator treatment. One such tool is the Perpetrator Index that was developed many years ago by the Tacoma/Pierce County DVIC, a work group of the Pierce County Commission Against Domestic Violence. The Perpetrator Index was developed with input from victim advocacy services, criminal justice system, and treatment providers. It is currently used by some programs around the State of Washington. There are probably other types of outcome evaluations being used in different parts of the state. We would like to see a collaborative effort to create a way to conduct outcome type research with treatment programs around the state. Documentation needs to go beyond recidivism looking at the reduction of negative behaviors and activities, replaced by positive behaviors and activities. Having verification of these behavioral changes from the victim and others in the client's life without placing the victim in a dangerous position would be an important part of this process.

8. **Possible solutions to current situation in DV Program supervision with DSHS, peer review, possible DOH Credentialing, and possible RCW and WAC revisions.** It is obvious to most people that the State of Washington has never put forth resources to adequately supervise and monitor Domestic Violence Treatment Programs. Additionally, people in those positions over the years have not possessed the experience or training needed to effectively supervise DV treatment programs (no offense to any of them). One of the requirements is to have experience working with Perpetrators of Domestic Violence in a State Certified Treatment Program. The people who are charged with Program Management at DSHS typically have worked alone, with no administrative or clerical help. They provide certification of programs, re-certification of programs, and investigation of complaints against programs. The DSHS Advisory Committee that is outlined in WAC 388-60 has not met in close to 15 years. The explanation that has been given has been that DSHS does not have the money to pay travel expenses to members of that committee. Most people would volunteer their time, and travel expenses to provide quality input to DSHS regarding Domestic Violence Treatment. There is no excuse for not having the Advisory Committee meet on a regular basis as is required by WAC 388-60.
The NWADVTP (formerly known as WADVIP) has over the years attempted to provide programs with Peer Review/Consultation (free of charge). We have also provided on-going continuing education in the form of Annual Domestic Violence Conferences (since 1994), and short term workshops where we bring in Domestic Violence Experts from the local community, and around the world to present on relevant issues, and new ideas on the Treatment of Domestic Violence. Presentations have been made by; Ellen Pence, PhD, Lenore Walker, EdD, Donald Dutton, PhD, Daniel Sonkin, PhD, Caroline West, PhD, Barbara Hart, PhD, and Oliver Williams, PhD just to name a few. With some local expert presenters such as: Anne Ganley, PhD, Roland Maiuro, PhD, April Gerlock, PhD, ARNP, and others from the Northwest. These trainings continue to be widely accepted and attended by treatment providers. The NWADVTP currently represents approximately 75 % of Domestic Violence Treatment Providers from around the State of Washington with some members from Oregon, Idaho, and British Columbia.

We believe that the current WAC 388-60 should be revised and updated as a means of continuing to improve the quality of clinical work done in Domestic Violence Treatment Programs in our state. Topics for discussion about WAC updates among all stakeholders could include:

a. Domestic Violence specific education/training requirements for potential providers (review or upgrade as needed).
b. Change the name of our organization from WADVIP to NWADVTP.
c. Re-activate the DSHS Advisory Committee as a volunteer committee.
d. Establishing standards for Family Court Evaluations, and Criminal Court Assessments.
e. Possible Peer Review/Consultation for Domestic Violence Programs.
f. Improved trainee and staff supervision.
g. Other possible changes as suggestions are submitted.

Washington State has been at the forefront of addressing the issues of Domestic Violence in all of its complexities, in order to create a safer community for all of our citizens, especially those who are most vulnerable. The State of Washington has been deemed as progressive by many in the Domestic Violence movement around the country. This is not a time to retreat from the gains that have been made over the last several decades in establishing an effective Coordinated Community Response to Domestic Violence: it is a time to build on those gains and move forward in a progressive manner. To do that will require hearing from all who are affected by and concerned about Domestic Violence. Nothing less than the best, fullest, and most accurate information is what will allow us to shape policies and practices that can truly help to end the on-going cycle of Domestic Violence in our community.

Respectfully,

NWADVTP Board of Directors

"Electronically Signed"
Steven C. Pepping, MA, CDP, DVP
Northwest Association of Domestic Violence Treatment Professionals, President

Acknowledgements

We are grateful to the Washington Supreme Court Gender and Justice Commission for meeting with us as we updated our systematic review of the literature.

The Northwest Association of Domestic Violence Treatment Professionals (NWADVTP) generously allowed time on their conference agenda to discuss our review of the treatment literature and the board of NWADVTP met with us in Olympia to discuss our methods for selecting studies to use in meta-analysis.

We thank Dr. Emily Tanner-Smith at the Vanderbilt University who served as a third coder to review studies to determine which met inclusion criteria.

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