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No. 71240-3-I

COURT OF APPEALS OF
THE STATE OF WASHINGTON
DIVISION ONE

In re Marriage of:

HEIDI GOUDE,

Respondent,

and

MICHAEL GOUDE,

Appellant.

MICHAEL GOUDE'S
REPLY BRIEF

2011 SEP -4 AM 11:48

COURT OF APPEALS DIV 1
STATE OF WASHINGTON

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I. **Argument in Reply**

A. **Whether Respondent's history of acts of violence met the definition of domestic violence in RCW 26.50.010 is a question of law that should be reviewed *de novo*.**

Legally, respondent's Heidi Goude's violence throughout the parties' marriage was domestic violence as defined in RCW 26.50.010. Matters of statutory construction are reviewed *de novo*.¹ Here, the trial court found Heidi Goude had "engaged in violence over the course of the marriage."² Having found Heidi Goude engaged in violence over the course of the parties' marriage, the determination whether this violence was *domestic* violence as defined in RCW 26.50.010 was a legal conclusion for the trial court.

Respondent tries to steer this Court into adopting the trial court's improper legal reasoning by arguing the trial court found that only Appellant's violence during the parties' marriage was domestic violence as defined in RCW 26.50.010(1) and that her violence was not. She then argues this finding is supported by substantial evidence and should not be disturbed on appeal. Finally, she argues this finding justifies the trial court in not imposing the mandatory residential time limitations on her.

Respondent's arguments are misplaced. First, the fact a court designates its determination as a "finding" does not make it so if it is

¹ *In re Marriage of Caven*, 136 Wn.2d 800, 806, 966 P.2d 1247 (1998).

² CP 1174, Findings of Fact and Conclusions of Law, Pg. 5.

really a conclusion of law. Conclusions of law that are mislabeled as findings of fact will still be treated as a conclusion of law and reviewed *de novo*.³ A finding of fact is an assertion that a phenomenon has happened or is or will be happening independent of or anterior to any assertion as to its legal effect.⁴ Findings of fact that carry legal implications are considered conclusions of law.⁵

In this case, whether Respondent committed acts of violence against her family and household members was a question of fact that has been expressly found against Respondent. The legal effect of Respondent's acts (i.e. whether those acts constitute a history of acts of domestic violence requiring mandatory residential time limitations) is a conclusion of law as to the legal implications resulting from the acts and is, therefore, a legal conclusion that should be reviewed *de novo*.⁶

If the trial court had not found Respondent engaged in violence over the course of the parties' marriage, then her argument that the standard of review should be something other than *de novo* may have some merit.

What distinguishes this case is that the trial court properly found

³ *Moulden & Sons, Inc. v. Osaka Landscaping & Nursery, Inc.*, 21 Wash. App. 194, 197, 584 P.2d 968 (1978)

⁴ *Moulden*, 21 Wash. App. At 197

⁵ *Para-Medical Leasing, Inc. v. Hangen*, 48 Wn. App. 389, 397, 739 P.2d 717 (1987).

⁶ Appellant only assigns error to the trial court's failure to characterize Respondent's history of acts of violence as a history of acts of domestic violence and its failure to impose the mandatory residential time limitations on Respondent after finding she engaged in violence toward family and household members during the course of the parties' marriage.

Respondent engaged in violence over the course of the parties' marriage. The trial court then erred when it refused to label Respondent's violence as *domestic* violence despite it being inflicted upon family and household members and falling square into RCW 26.50.010(1)'s definition of domestic violence. The trial court then further erred when it failed to hold Respondent to the burden-shifting scheme codified in RCW 26.09.191(2)(a) and (n).

Even if this Court analyzes the parenting plan provisions using an abuse of discretion standard, reversal is required. A trial court abuses its discretion when it uses an incorrect standard or if its decision is outside the range of acceptable choices given the facts and the correct legal standard.⁷ Here, Appellant claims the trial court erred when it used the wrong standard for determining whether Respondent's violence was domestic violence as defined in RCW 26.50.010(1) and that its failure to impose the mandatory residential time limitations was outside the range of acceptable choices.

⁷ *Mansour v. Mansour*, 126 Wash. App. 1, 6, 106 P. 3d 768 (2004)

B. The evidence shows that Respondent's history of acts of violence were a history of acts of domestic violence; her justifications are simply that: justifications that attempt to minimize, deflect, and explain her acts of domestic violence.

First, Respondent admits that in 1999 the court issued a final DVPO to protect Appellant from Respondent.⁸ The DVPO specifically found Respondent had committed domestic violence (as defined in RCW 26.50.010). As such, that fact has been litigated and decided. Issue preclusion bars it from being re-litigated in this proceeding.

Despite this, Respondent cites Appendix F as legal authority for the proposition that because the court is not required to apply the Rules of Evidence in a protection order hearing under chapter 26.50 RCW, “the issuance of a protection order is not necessarily res judicata as to whether domestic violence has occurred.” Appendix F—a manual for judges written by a commission of lawyers, judges, health care providers and social scientists—is not legal authority. There is no additional support cited for her argument. A respondent's argument in support of the issues presented for review must include citations to legal authority. RAP 10.3(b) and (a)(6). Arguments that are not supported by citation to pertinent authority need not be considered.⁹

⁸ Br. of Resp't. at 22.

⁹ *Cowiche Canyon Conservancy v. Boslev*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

Second, Respondent admits to hitting her brother with a chair in May of 2000.¹⁰ In the contemporaneous police report admitted into evidence, Respondent stated that the fight between Appellant and Respondent's brother had been broken up and that she saw "red" and attacked her brother hitting him with a chair over his shoulder and back.¹¹ Her brother experienced pain and had visible signs of trauma to his shoulder.¹² This is violence – it is physical harm, bodily injury and assault. Moreover, it was an act of domestic violence as defined in RCW 26.50.010(1) because it was violence toward a family member.

Respondent admits to having an argument with Appellant and breaking a plate.¹³ She was charged with Assault IV-DV and pled guilty.¹⁴ She admitted in requests for admissions that she pled guilty to Assault IV-DV.¹⁵ Now she takes a different position without requesting leave of court to amend her admissions. Her new position should be disregarded because the effect of her admission is that her pleading guilty to the Assault-IV DV was "conclusively established."¹⁶

(1992); *State v. Elliott*, 114 Wn.2d 6, 15, 785 P.2d 440 (1990); RAP 10.3(a).

¹⁰ Br. of Resp't. at 23.

¹¹ Trial Ex. 251, Moses Lake Police Incident Report, May 28, 2000. *Also at* CP 1399.

¹² *Id.*

¹³ Br. of Resp't at 24.

¹⁴ Trial Ex. 189.

¹⁵ CP 1361 and additional citation to clerk's papers TO BE SUPPLEMENTED.

¹⁶ CR 36(b)

Respondent admits to kicking and damaging the bathroom door “in anger.” She now wants to add that Father was not in the bathroom at the time.¹⁷ But she never testified to that at trial. Appellant’s uncontradicted testimony was that he retreated to the bathroom, locked the door and Respondent began pounding on the door and ultimately kicking it in the children’s presence.¹⁸ Respondent never denied the children were present when she committed this act.¹⁹

The trial court made an express and unchallenged finding that “Ms. Goude did, in fact, pull [the daughter] by the hair one night in the campsite.”²⁰ Nobody assigned error to this finding. Respondent’s newly-created denial of what happened, raised for the first time in argument in her Response Brief, should be disregarded.

The uncontroverted evidence, together with the widely disputed evidence as to other violence both parties engaged in, supports the trial court’s express finding that “both parties engaged in violence over the course of the marriage.”²¹

Having established that both Appellant and Respondent engaged in violence over the course of the marriage, the next issue the trial court

¹⁷ Br. of Resp’t at 25.

¹⁸ RP 1414:25-1417:9 (Michael Goude, Aug. 28, 2013).

¹⁹ RP 1422:22 – 1417:9; and Trial Exhibit 115.

²⁰ RP 6 (Oral Ruling, Sept. 12, 2013).

²¹ CP 1174, Finding of Fact 2.21. *See also* RP at 7:8-9 (Oral Ruling, Sept. 12, 2013).

should have addressed was whether their violence was domestic violence as defined in RCW 26.50.010(1). The trial court properly concluded Appellant's violence was domestic violence under RCW 26.50.010(1), but improperly concluded Respondent's history of acts of violence were not a history of acts of domestic violence as defined in RCW 26.50.010(1).

This is the trial court's first error. RCW 26.50.010(1) defines domestic violence as violence²² "*between family or household members.*"²³ Family or household members is defined in RCW 26.50.010(2) as including "spouses,...adult persons related by blood or marriage,...and persons who have a biological or legal parent-child relationship,..."²⁴ This would include Respondent's spouse (Appellant), her brother, and her oldest daughter. As such, Respondent's history of acts of violence was required to be a history of acts of *domestic* violence as defined in RCW 26.50.010(1) because it was inflicted upon family and household members.

Respondent counters Appellant's argument by trying to judicially create exceptions to the clear and unambiguous definition of domestic violence in RCW 26.50.010(1). She wants this Court to import

²² Violence means "[p]hysical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault."

²³ RCW 26.50.010(1)(a) (emphasis added).

²⁴ RCW 26.50.010(2).

Washington's criminal code's defenses into RCW 26.50.010(1) and thereby excuse and justify her domestic violence because it could have been defended in a criminal proceeding. Respondent wants a different label for her domestic violence so she does not have to prove she has become sufficiently rehabilitated that the chances that she would again engage in domestic violence, either as a primary aggressor or as a secondary aggressor, is so remote that it is unlikely to occur again. As will be shown in this brief's next section, her reliance on the criminal code is misplaced.

C. Respondent's reliance on the criminal code is misplaced.

Criminal proceedings involving use of force are different from civil parenting or protection order proceedings involving the use of force between family and household members. Respondent argues that her acts of domestic violence against her family and household members should not be considered acts of domestic violence as defined in RCW 26.50.010(1) because her motives in committing the acts were in defense of herself or another, citing RCW 9A.16.020(3)²⁵ and 9A.16.110²⁶ and that her use of force on her daughter was not criminally unreasonable, citing RCW 9A.16.100.²⁷ Because this was not a criminal proceeding,

²⁵ Br. of Resp't. at 23.

²⁶ Br. of Resp't. at 29.

²⁷ Br. of Resp't. at 33.

the unlawful use of force defenses in the criminal code should not be applied to exempt acts of domestic violence that would otherwise fall within the civil definition in RCW 26.50.010(1). If the legislature wants to import these defenses into exceptions to the domestic violence definition in RCW 26.50.010(1), then it is free to do so. This Court, however, should refrain from doing so.²⁸

To be sure, RCW 26.09.191(2)(a) specifically requires mandatory residential time limitations with children if a parent has engaged in “a history of acts of domestic violence *as defined in RCW 26.50.010(1)*.” (emphasis added). Clearly and unambiguously the legislature chose the domestic violence definition in RCW 26.50.010(1) – the one that has no exemptions or exceptions. It is, therefore, the operative domestic violence definition to be applied in this case, and the exemptions in Chapter 9A.16 RCW are, therefore, irrelevant.

The same is true for the trial court’s explanation as to why it concluded Appellant’s history of violence toward family or household members is a history of acts of domestic violence as defined in RCW 26.50.010(1) and that Respondent’s history of violence toward family or household members is not a history of acts of domestic violence under the same statute. The trial court’s findings show the trial court relied

²⁸ *In re Det. of Martin*, 163 Wn. 2d 501, 514, 182 P.3d 951, 957 (2008).

upon its determining that Appellant was the primary or predominant aggressor in the altercations.²⁹ First, Appellant was not the aggressor in all the incidents of violence. He was not even involved in the violence against Respondent's brother when Respondent hit him with a chair. He was not involved in the violence against their oldest daughter. More importantly, however, under RCW 26.50.010(1) acts of domestic violence are not confined to the primary aggressor; rather, the clear and unambiguous language applies to both the primary aggressor and any secondary aggressor. In Washington, determining the primary aggressor in cases involving common couple violence or mutual domestic violence is relevant when law enforcement must make a domestic violence arrest.³⁰

Determining who the primary aggressor is in civil parenting proceedings is irrelevant to the burden shifting analysis in RCW 26.09.191(2)(a) and (n). If both parties commit assaultive conduct toward each other, then they are subject to the mandatory residential time limitations in RCW 26.09.191(2)(a). That statute requires mandatory residential time limitations against any parent who has a history of acts of domestic violence as defined in RCW 26.50.010(1). RCW 26.50.010(1) defines an act of domestic violence as assaultive conduct directed at

²⁹ CP 1174, Findings of Fact and Conclusions of Law, Pg. 5.

³⁰ *See* RCW 10.31.100(2)(c)

one's family or household member(s). RCW 10.31.100, however, does not require law enforcement to arrest both parties who engage in assaultive conduct toward the other; rather law enforcement is given discretion to determine who the primary or predominant aggressor is and arrest only the predominant aggressor. Just because law enforcement does not have to arrest a non-primary aggressor who committed assaultive conduct toward another household or family member does not exempt the assaultive act from being an act of domestic violence as defined in RCW 26.50.010(1).

Similarly, the trial court tried to bolster its conclusion that only Respondent engaged in acts of domestic violence because he engaged in a pattern of emotional abuse of Respondent. As bad as emotional abuse is, it is not domestic violence as defined by RCW 26.50.010(1).³¹

Legislative history supports Appellant's statutory construction. The Domestic Violence Protection Act (DVPA) was originally enacted in 1984 under Session Laws, Chapter 263, that codified RCW ch. 26.50, including the definition of domestic violence. In Section 19, it amended RCW 10.31.100 to require law enforcement officers to arrest any and all individuals who an officer believes committed an assault on their spouse

³¹ *Caven v. Caven*, 136 Wash. 2d 800, 809, 966 P.2d 1247, 1251 (1998) (disagreeing with Petitioner's assertion that a history of acts of domestic violence must be defined in a way that acknowledges that it is a fear-based family dynamic.)

or other person with whom that person lives with or lived with.³² At that time, there were no predominant or primary aggressor exceptions to the provision that required arrest.

The DVPA was substantially amended in 1985 by session laws chapter 303. In Section 9,³³ the legislature added the primary physical aggressor exemption to the mandatory arrest without a warrant statute, RCW 10.31.100, but added no such exemption to the definition of domestic violence in RCW 26.50.010(1).

Why would the legislature not import self-defense, defense of others, or primary physical aggressor exemptions to the civil domestic violence definition in RCW 26.50.010(1) or RCW 26.09.191(a)? After much thought, there is a perfectly good reason. In a civil parenting proceeding, like the case here, if either parent engages in assaultive behavior toward the other parent or other family or household member, then that is presumptively bad for children to witness. To a child it does not matter who the primary physical aggressor is. Even a victim of domestic violence that physically assaults the primary physical aggressor is not modeling correct behavior. In fact, escalating the physical confrontation does more harm than good.

³² See Session Laws 1984, c 263, §§ 2 and 19 attached as **Appendix A**.

³³ **Appendix B** attached.

In a civil parenting proceeding, all that RCW 26.09.191(2)(a) does when a parent has a history of acts of domestic violence is shift the burden to that parent to overcome the mandatory residential time limitations imposed by RCW 26.09.191(2)(a). That parent can only meet his or her burden as set forth in RCW 26.09.191(2)(n). That parent must produce evidence, and the trial court must expressly find, that parent's acts of domestic violence had no impact on the child(ren), which is not the case here; or alternatively, to show that contact between that parent and the child(ren) will not harm the child(ren) and that the likelihood the parent's "harmful or abusive conduct will recur is so remote that it would not be in the child's best interests to apply the limitation of RCW 26.09.191(2)(a)."³⁴ Here, the trial court never made the express findings required by RCW 26.09.191(2)(n) as to Respondent.

Self-defense and defense of others exceptions to domestic violence are appropriate when faced with a criminal sanction that could infringe upon a party's liberty and property interests because convictions carry with them incarceration and monetary fine possibilities. Imposing discretion to law enforcement officers to determine a primary physical aggressor and arrest only that person is similarly important to assure the fundamental liberty interest in freedom can be protected.

³⁴ RCW 26.09.191(2)(n)

RCW 26.09.191(2)(a) and (n) carry no such drastic infringements upon liberty interests when a party has engaged in a history of acts of domestic violence. RCW 26.09.191(2)(a) simply presumes children will be better off with a parent who has either no history of acts of domestic violence or who has proven that they have rehabilitated themselves to the point where recurrence is so remote that restricting contact between the rehabilitated parent and the children is not in the children's best interests. This presumption can only be overcome if any parent with a history of acts of domestic violence meets the criteria in RCW 26.09.191(2)(n), and the trial court makes express findings to that effect.

Here, both parties had a history of acts of domestic violence. Appellant sought and successfully completed domestic violence perpetrator treatment. He admitted his faults and acknowledged his choices and what he should have done as opposed to what he did do. Respondent, on the other hand, never sought treatment, despite being advised to do so by the Guardian ad Litem. She did not admit fault; rather, she justified, explained, rationalized, and minimized her acts of domestic violence.

Appellant's position, as odd as it may seem at first blush, advances very real public policy interests. As cited by Respondent in her Response Brief, RCW 26.09.003 finds "the treatment needs of the parties to

dissolutions are necessary to improve outcomes for children.” The civil domestic violence definition in RCW 26.50.010(1) without exemptions for self-defense, defense of others, or primary physical aggressors advances this stated policy. Nowhere does RCW 26.09.191(2)(n) specify what treatment is necessary for a secondary aggressor or a primary aggressor. That is up to the professionals, but it must be sufficient to prove to the court that they have rehabilitated themselves so that they do not engage in acts of domestic violence, especially in the children’s presence, ever again. Even a secondary aggressor who has less strength and physical power has choices when an argument starts that could turn into domestic violence.

Respondent states that she started a Bible study group and “went to DV support groups when she could.”³⁵ However, these efforts were not sufficient to support the express finding required under RCW 26.09.191(2)(n) for the court not to apply restrictions.

D. Because Respondent had a history of acts of domestic violence, the trial court was required under statute to place parenting restrictions on her.

RCW 26.09.191(2)(a) requires that a “parent’s residential time *shall* be limited” if the parent has a history of acts of domestic violence. (emphasis added). This is not a discretionary provision. Having

³⁵ Br. of Resp’t. at 38.

established that the Respondent had a history of acts of domestic violence, the trial court should have limited her residential time with the children. To avoid restrictions, the burden shifted to Respondent to show “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,”³⁶ which she did not do. The required limitations apply to residential time as well as decision making.³⁷

E. The trial court considered no evidence of Earthtribe Percussion’s intangible goodwill and engaged in no analysis of its intangible goodwill.

Respondent admits in her brief, regarding the Father’s business, Earthtribe Percussion, “The trial court does not specifically state the amount of goodwill that was considered or if it even considered any.”³⁸ She argues however that “it’s safe to assume” that the business has a strong customer base and that “it can be surmised” that it has a good reputation, and that this will “amount to” goodwill.³⁹

The trial court did not even engage in the preliminary inquiry whether goodwill exists, as it should first do.⁴⁰ It should then have examined the Father’s business under the *Fleege* factors, and employed one or more of

³⁶ RCW 26.09.191(2)(n).

³⁷ RCW 26.09.191.

³⁸ Br. of Resp’t. at 48.

³⁹ Br. of Resp’t. at 45-46.

⁴⁰ *In re Marriage of Hall*, 103 Wn.2d 236, 243, 692 P.2d 175 (1984).

the accepted methods of evaluation.⁴¹ Instead, as the Father pointed out in his opening brief, the trial court arbitrarily added some \$21,000 to \$22,000 in intangible goodwill to the modest value of the existing tangible assets (e.g. tools, equipment, and inventory) without any evidence to support the intangible goodwill value. This was a material error.

II. Conclusion.

For the above reasons, the findings of fact and conclusions of law, dissolution decree, and parenting plan should be reversed and remanded to the trial court with instructions to enter conclusions that Respondent's violence throughout the marriage were acts of domestic violence as defined in RCW 26.50.010(1), and to impose the mandatory residential and decision-making restrictions under RCW 26.09.191(2)(a) unless Respondent can prove the RCW 26.09.191(2)(n) elements by a preponderance of the evidence. The child support order should also be remanded with instructions that it be revised in accordance with the residential restrictions imposed under RCW 26.09.191. Additionally, the trial court should be instructed to value the Earthtribe Percussion drum-making business based only on the tangible assets, which were the only assets to which there was any testimony, and to revise the equalizing

⁴¹ *Id.* at 242-43.

transfer payment accordingly. Finally, Appellant should be awarded his attorney fees, to be paid by Respondent.

DATED this 2nd day of September, 2014.

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the below written date, I caused delivery of a true copy of Michael Goude's Reply Brief to the following via U.S. Mail:

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Signed this 2nd day of September, 2014 Seattle, Washington.



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APPENDIX A

NEW SECTION. Sec. 1. This chapter may be cited as the "Domestic Violence Prevention Act".

* NEW SECTION. Sec. 2. As used in this chapter, the following terms shall have the meanings given them:

* (1) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; or (b) sexual assault of one family or household member by another.

(2) "Family or household members" means spouses, former spouses, adult persons related by blood or marriage, persons who are presently residing together, or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time.

(3) "Court" includes the superior, district, and municipal courts of the state of Washington.

(4) "Judicial day" does not include Saturdays, Sundays, or legal holidays.

NEW SECTION. Sec. 3. (1) Any person may seek relief under this chapter by filing a petition with a court alleging that the person has been the victim of domestic violence committed by the respondent. The person may petition for relief on behalf of himself or herself and on behalf of minor family or household members.

(2) The courts defined in section 2(3) of this act have jurisdiction over proceedings under this chapter. If a proceeding under chapter 26.09, 26.12, or 26.26 RCW is commenced in a superior court before or after the filing of an action in a district or municipal court under this chapter, then the superior court shall have exclusive jurisdiction over proceedings under this chapter. Any municipal or district court order entered while that court had jurisdiction remains valid until superseded by a superior court order.

(3) An action under this chapter shall be filed in the county or the municipality where the petitioner resides, unless the petitioner has left the residence or household to avoid abuse. In that case, the petitioner may bring an action in the county or municipality of the previous or the new household or residence.

(4) A person's right to petition for relief under this chapter is not affected by the person leaving the residence or household to avoid abuse.

(5) If an action under this chapter is commenced in a district or municipal court and a petitioner or respondent contests custody or visitation rights, then, upon the motion of either party containing proof that the petition for relief under this chapter has been filed with the superior court, the district or municipal court shall dismiss the action.

NEW SECTION. Sec. 4. There shall exist an action known as a petition for an order for protection in cases of domestic violence.

in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation.

NEW SECTION. Sec. 13. When a party alleging a violation of an order for protection issued under this chapter states that the party is unable to afford private counsel and asks the prosecuting attorney for the county or the attorney for the municipality in which the order was issued for assistance, the attorney shall initiate and prosecute a contempt proceeding if there is probable cause to believe that the violation occurred. In this action, the court may require the violator of the order to pay the costs incurred in bringing the action, including a reasonable attorney's fee.

NEW SECTION. Sec. 14. Upon application with notice to all parties and after a hearing, the court may modify the terms of an existing order for protection. In any situation where an order is terminated or modified before its expiration date, the clerk of the court shall forward on or before the next judicial day a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modified or termination order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the law enforcement information system.

NEW SECTION. Sec. 15. Nothing in this act may affect the title to real estate.

NEW SECTION. Sec. 16. Any proceeding under this act is in addition to other civil or criminal remedies.

NEW SECTION. Sec. 17. No peace officer may be held criminally or civilly liable for making an arrest under section 12 of this act if the police officer acts in good faith and without malice.

Sec. 18. Section 9A.36.040, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.36.040 are each amended to read as follows:

(1) Every person who shall commit an assault or an assault and battery not amounting to assault in either the first, second, or third degree shall be guilty of simple assault.

(2) Simple assault is a gross misdemeanor.

(3) Every person convicted of three offenses under this section against a family or household member as defined in RCW 10.99.020 is guilty of a class C felony.

*
↓
Sec. 19. Section 1, chapter 198, Laws of 1969 ex. sess. as last amended by section 1, chapter 106, Laws of 1981 and RCW 10.31.100 are each amended to read as follows:

A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when

the offense is committed in the presence of the officer, except as provided in subsections (1) through ~~((3))~~ (4) of this section.

(1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor, involving physical harm or threats of harm to any person or property or the unlawful taking of property or involving the use or possession of cannabis shall have the authority to arrest the person.

(2) A police officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) An order has been issued of which the person has knowledge under RCW 10.99.040(2), 10.99.050, 26.09.060, chapter 26.26 RCW, or chapter 26... RCW (sections 1 through 17 of this 1984 act) restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence or excluding the person from a residence; or

(b) The person within the preceding four hours has assaulted that person's spouse, former spouse, or other person with whom the person resides or has formerly resided.

(3) Any police officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic laws shall have the authority to arrest the person:

(a) RCW 46.52.010, relating to duty on striking an unattended car or other property;

(b) RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(c) RCW 46.61.500 or 46.61.530, relating to reckless driving or racing of vehicles;

(d) RCW 46.61.502 or 46.61.504, relating to persons under the influence of intoxicating liquor or drugs;

(e) RCW 46.20.342, relating to driving a motor vehicle while operator's license is suspended or revoked;

(f) RCW 46.61.525, relating to operating a motor vehicle in a negligent manner.

~~((3))~~ (4) A law enforcement officer investigating at the scene of a motor vehicle accident may arrest the driver of a motor vehicle involved in the accident if the officer has probable cause to believe that the driver has committed in connection with the accident a violation of any traffic law or regulation.

~~((4))~~ (5) Except as specifically provided in subsections (2) ~~((and))~~, (3), and (4) of this section, nothing in this section extends or otherwise affects the powers of arrest prescribed in Title 46 RCW.

(6) No police officer may be held criminally or civilly liable for making an arrest pursuant to RCW 10.31.100(2) if the police officer acts in good faith and without malice.

APPENDIX B

forwarded on or before the next judicial day to the appropriate law enforcement agency specified in the order for service upon the respondent. Service of an order issued under this chapter shall take precedence over the service of other documents unless they are of a similar emergency nature.

(4) If the sheriff or municipal peace officer cannot complete service upon the respondent within ten days, the sheriff or municipal peace officer shall notify the petitioner. The petitioner shall provide information sufficient to permit notification.

(5) Returns of service under this chapter shall be made in accordance with the applicable court rules.

(6) If an order entered by the court recites that the respondent appeared in person before the court, the necessity for further service is waived and proof of service of that order is not necessary.

(7) Except in cases where the petitioner is granted leave to proceed in forma pauperis, municipal police departments serving documents as required under this chapter may collect the same fees for service and mileage authorized by RCW 36.18.040 to be collected by sheriffs.

Sec. 7. Section 15, chapter 263, Laws of 1984 and RCW 26.50.200 are each amended to read as follows:

Nothing in this ((act)) chapter may affect the title to real estate; PROVIDED, That a judgment for costs or fees awarded under this chapter shall constitute a lien on real estate to the extent provided in chapter 4.56 RCW.

Sec. 8. Section 9A.36.040, chapter 260, Laws of 1975 1st ex. sess. as amended by section 18, chapter 263, Laws of 1984 and RCW 9A.36.040 are each amended to read as follows:

(1) Every person who shall commit an assault or an assault and battery not amounting to assault in either the first, second, or third degree shall be guilty of simple assault.

(2) Simple assault is a gross misdemeanor.

~~((3) Every person convicted of three offenses under this section against a family or household member as defined in RCW 10.99.020 is guilty of a class C felony:))~~

* Sec. 9. Section 1, chapter 198, Laws of 1969 ex. sess. as last amended by section 19, chapter 263, Laws of 1984 and RCW 10.31.100 are each amended to read as follows:

A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer, except as provided in subsections (1) through (4) of this section.

(1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor, involving physical harm or threats of harm to any person or property or the unlawful taking of property or involving the use or possession of cannabis shall have the authority to arrest the person.

(2) A police officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) An order has been issued of which the person has knowledge under RCW 10.99.040(2), 10.99.050, 26.09.060, chapter 26.26 RCW, or chapter 26.50 RCW restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence or excluding the person from a residence; or

(b) The person is eighteen years or older and within the preceding four hours has assaulted that person's spouse, former spouse, or ((other)) a person eighteen years or older with whom the person resides or has formerly resided and the officer believes: (i) A felonious assault has occurred; (ii) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or (iii) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death. Bodily injury means physical pain, illness, or an impairment of physical condition. When the officer has probable cause to believe that spouses, former spouses, or other persons who reside together or formerly resided together have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider: (i) The intent to protect victims of domestic violence under RCW 10.99.010; (ii) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (iii) the history of domestic violence between the persons involved.

(3) Any police officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic laws shall have the authority to arrest the person:

(a) RCW 46.52.010, relating to duty on striking an unattended car or other property;

(b) RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(c) RCW 46.61.500 or 46.61.530, relating to reckless driving or racing of vehicles;

(d) RCW 46.61.502 or 46.61.504, relating to persons under the influence of intoxicating liquor or drugs;

(e) RCW 46.20.342, relating to driving a motor vehicle while operator's license is suspended or revoked;

* *

(f) RCW 46.61.525, relating to operating a motor vehicle in a negligent manner.

(4) A law enforcement officer investigating at the scene of a motor vehicle accident may arrest the driver of a motor vehicle involved in the accident if the officer has probable cause to believe that the driver has committed in connection with the accident a violation of any traffic law or regulation.

(5) Except as specifically provided in subsections (2), (3), and (4) of this section, nothing in this section extends or otherwise affects the powers of arrest prescribed in Title 46 RCW.

(6) No police officer may be held criminally or civilly liable for making an arrest pursuant to RCW 10.31.100(2) if the police officer acts in good faith and without malice.

Sec. 10. Section 4, chapter 105, Laws of 1979 ex. sess. as last amended by section 22, chapter 263, Laws of 1984 and RCW 10.99.040 are each amended to read as follows:

(1) Because of the serious nature of domestic violence, the court in domestic violence actions:

(a) Shall not dismiss any charge or delay disposition because of concurrent dissolution or other civil proceedings;

(b) Shall not require proof that either party is seeking a dissolution of marriage prior to instigation of criminal proceedings;

(c) Shall waive any requirement that the victim's location be disclosed to any person, other than the attorney of a criminal defendant, upon a showing that there is a possibility of further violence: PROVIDED, That the court may order a criminal defense attorney not to disclose to his client the victim's location; and

(d) Shall identify by any reasonable means on docket sheets those criminal actions arising from acts of domestic violence.

(2) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any ~~((defendant))~~ person charged with or arrested for a crime involving domestic violence is released from custody before arraignment or trial on bail or personal recognizance, the court authorizing the release may prohibit ~~((the defendant))~~ that person from having any contact with the victim. The ~~((arresting))~~ jurisdiction authorizing the release shall determine whether ~~((the defendant))~~ that person should be prohibited from having any contact with the victim. If there is no outstanding restraining or protective order prohibiting ~~((the defendant))~~ that person from having contact with the victim, the court authorizing release may issue, by telephone, a no-contact order prohibiting the ~~((defendant))~~ person charged or arrested from having contact with the victim. The no-contact order shall also be issued in writing as soon as possible. If the court has probable cause to believe that the ~~((defendant))~~ person charged or arrested is likely to use or display or threaten to use a deadly