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NO. 59322-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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COURT OF APPEALS
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

LEO BUNKER,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE ANDREA JARVAS

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. The defendant urges this Court to interpret RCW 26.50.110 to criminalize only willful violations of a no-contact provision of a court order *for which an arrest is required*. However, the legislature's codified statement of intent, the statutory scheme as a whole, and case law make clear that any willful contact in violation of a court order constitutes a crime. Thus, this Court may subtract the extraneous language from the statute both because it is imperatively required to make the statute rational and to implement the legislative intent. Furthermore, the "last antecedent rule," and the rule of lenity do not apply when the legislative intent is clear. Should this Court decline to interpret the statute in a manner contrary to the clear legislative intent?

2. Unless a court finds a substantial and compelling reason justifying an exceptional sentence, the court must impose a standard range sentence. As a matter of law, consent is not a defense to the crime of felony violation of a court order ("FVCO"). To allow consent to void a court order for protection, would undermine the legislative intent and public policy behind the laws that protect victims of domestic violence. Did the trial court correctly find that, as a matter of law, consensual contact was not a

substantial and compelling reason to depart from a standard range sentence?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

By amended information, the State charged the defendant, Leo Bunker, with Domestic Violence FVCO.¹ CP 23. The jury convicted Bunker as charged. CP 25-26. The court imposed a standard range sentence. CP 60-68. Bunker timely appeals. CP 69.

2. SUBSTANTIVE FACTS

On August 18, 2005, Washington State Patrol Troopers Melvin Hurd and James MacGregor were conducting commercial vehicle speed emphasis patrol along SR 167. 11/6/06 RP 47-48, 65-68. They stopped the defendant, Leo Bunker, for speeding. 11/6/06 RP 49, 67-68. While performing a routine records check on Bunker's driver's license, the troopers learned that there were two valid court orders for protection in which Bunker was the

¹ At the time of the charged incidents, Bunker had two prior convictions for violating a domestic violence no contact order. RCW 26.50.110(1), (5); Ex 1, 2, 8.

Respondent and Lillian Hiatt was the Petitioner. 11/6/06 RP 50-51;
Ex. 1, 2.

Bunker had a female passenger in his semi-truck. 11/6/06
RP 57. The troopers contacted the passenger in an attempt to
determine whether she was the individual named in the orders for
protection. 11/6/06 RP 57, 68-71. The woman repeatedly provided
the troopers with false information. 11/6/06 RP 68-70, 77-78. The
troopers suspected that the woman was Hiatt because she
resembled the physical characteristics listed on the orders of
protection. 11/6/06 RP 74, 80.

After the woman denied that she was Hiatt, the troopers
transported her to the Auburn Police Department where she was
positively identified by her fingerprints and Department of Licensing
photograph. 11/6/06 RP 57-58, 71, 83-84. Trooper Faulk
explained that sometimes people will not offer identifying
information because they are afraid; thus, as a matter of protocol,
the troopers have to be "very diligent" in determining whether an
unidentified individual is the person named in the protection order.
11/6/06 RP 82.

The troopers arrested Bunker for FVCO after confirming that he had two previous convictions for violating courts orders about which he had knowledge. 11/6/06 RP 58-59; Ex. 1, 2, 8.

C. ARGUMENT

1. RCW 26.50.110(1) CRIMINALIZES ALL CONTACT THAT VIOLATES PRIOR COURT ORDERS, NOT SIMPLY THOSE "FOR WHICH AN ARREST IS REQUIRED."

Our legislature has characterized "domestic violence as a serious crime against society." The legislature has made its intent to enforce the law and provide maximum protection for victims of domestic violence very clear through its enactment of the Domestic Violence Act, the Domestic Violence Prevention Act, and the Foreign Protection Order Full Faith and Credit Act.

Despite the legislature's commitment to "stress the enforcement of the laws to protect the victim" and to "communicate the attitude that violent behavior is not excused or tolerated," Bunker urges this Court to interpret language in RCW 26.50.110(1) that refers to RCW 10.31.100(2), as a modifying phrase that results in the decriminalization of the domestic violence laws.

Bunker contends that both the charging document and the jury instructions were defective because they omitted an "essential

element" of the crime of FVCO. Bunker's argument is premised on the claim that a willful violation of a no-contact provision of a court order is not a crime—only a willful violation of a no-contact provision that involves acts or threats of violence or entering or remaining in a prohibited location is a crime. From this follows his claims that the phrase, "for which an arrest is required," must be included in the charging document and the jury instructions and that, absent proof of this "essential element," there is insufficient evidence to support the jury's verdict.

As support for Bunker's interpretation of RCW 26.50.110, he relies upon both the "last antecedent rule" and the rule of lenity. Bunker's reliance is misplaced. Because the codified statement of legislative intent, the legislative history, the statutory scheme, and the relevant case law all indicate that a willful violation of a no-contact provision of a court order is a criminal offense and shall be enforced accordingly, neither the last antecedent rule, nor the rule of lenity applies. Consequently, Bunker's interpretation of RCW 26.50.110 fails.

Moreover, because the State established Bunker's willful violation of a no-contact order, about which he had knowledge, and

that he had on two prior occasions been convicted of violating court orders, sufficient evidence supports the jury's verdict.

a. Principles Of Statutory Construction.

The interpretation of a statute is a question of law that is reviewed de novo. Berrocal v. Fernandez, 155 Wn.2d 585, 590, 121 P.3d 82 (2005). If a statute is ambiguous, this Court will resort to principles of statutory construction, legislative history, and relevant case law to assist in interpreting it. Cockle v. Dep't of Labor & Indus., 142 Wn.2d 801, 808, 16 P.3d 583 (2001). This Court must construe an ambiguous statute to effectuate the intent of the legislature. Davis v. State ex rel. Dep't of Licensing, 137 Wn.2d 957, 963, 977 P.2d 554 (1999).

In discerning and implementing the legislative intent, a court considers the entire statute in which the provision is found, as well as related statutes or other provisions in the same act that disclose a statutory scheme as a whole. See State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003). Legislative definitions provided by the statute control. State v. Sullivan, 143 Wn.2d 162, 175, 19 P.3d 1012 (2001). "Unlikely, absurd or strained consequences resulting from a literal reading should be avoided." State v. McDougal, 120

Wn.2d 334, 350, 841 P.2d 1232 (1992). Finally, this Court does "[n]ot add to or subtract from the clear language of a statute unless that is *imperatively required to make the statute rational.*" Sullivan, 143 Wn.2d at 175 (emphasis supplied).

Here, in order to effectuate the intent of the legislature, and avoid unlikely, absurd or strained consequences from a literal reading of a poorly structured sentence, this Court should let the legislative definitions of the statutory scheme as a whole control. It is, therefore, imperative to subtract the extraneous reference to RCW 10.31.100(2) to make the statute rational.

b. The Evolution Of Domestic Violence Laws.

i. The legislative intent and history.

In 1979, the legislature enacted the Domestic Violence Act, stating its intent to "[a]ssure the victim of domestic violence the maximum protection from the abuse which the law and those who enforce it can provide." RCW 10.99.010. The legislature stated its intent to "stress the enforcement of the laws to protect the victim [of domestic violence] and [to] communicate the attitude that violent behavior is not excused or tolerated." RCW 10.99.010. The legislature recognized the "[l]ikelihood of repeated violence directed

at those who have been victims of domestic violence in the past," so it authorized the issuance of a no-contact order where a court released a defendant from custody. RCW 10.99.040. Even in its original incarnation, the statute required that the no-contact order notified the defendant that any willful violation of the no-contact order is a criminal offense. Former RCW 10.99.040(2).²

To better effectuate its stated intent, the legislature in 1984 enacted the Domestic Violence Prevention Act ("DVPA"), chapter 26.50 RCW. LAWS OF 1984, CH. 263, § 2. As part of the DVPA, the legislature included the mandatory arrest provision in

² The legislature has modified RCW 10.99.040 several times since its enactment in 1979. However, it has always required that a no-contact order notify the defendant that any willful violation is a criminal offense. The current version of RCW 10.99.040 provides:

(4)(a) Willful violation of a court order issued under subsection (2) or (3) of this section is punishable under RCW 26.50.110.

(b) The written order releasing the person charged or arrested shall contain the court's directives and shall bear the legend: "Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order."

RCW 26.50.110(2).³ RCW 10.31.100(2) was amended at the same time as the DVPA. LAWS OF 1984, CH. 263, § 19. Consequently, once a law enforcement officer had probable cause to believe that a domestic violence crime had been committed, arrest was mandatory. LAWS OF 1984, CH. 263 also defined "Domestic violence" crimes as including violations of provisions of protection orders.⁴ RCW 10.99.020.

Another part of the DVPA, as originally enacted, provided, "A violation of an order for protection shall also constitute contempt of court, and is subject to the penalties prescribed by law." RCW 26.50.110(3).⁵

In 1989, the legislature amended the restraint provisions defined in RCW 26.50.060 of the DVPA. In particular, the

³ At the time of enactment, RCW 26.50.110(2) stated:

A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under this chapter that restrains the person or excludes the person from a residence, if the person restrained knows of the order.

⁴ LAWS 1995, CH. 246, § 21 included violations of no-contact orders within "Domestic violence" crimes. RCW 10.99.020.

⁵ RCW 26.50.110(3) currently reads:

A violation of an order issued under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, shall also constitute contempt of court, and is subject to the penalties prescribed by law.

legislature authorized courts to provide relief as follows: "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." LAWS 1989, CH. 411, § 1.⁶ The same law prohibited a resolution of domestic violence crimes by compromise of misdemeanor. LAWS 1989, CH. 411, § 3 (adopting subsection (4) of RCW 10.22.010).

The legislature again strengthened domestic violence laws in 1993, when it found that domestic violence was a problem of "immense proportions affecting individuals as well as communities." Laws 1993, ch. 350, § 1. The legislature stated in no uncertain terms: "The crisis is growing." Laws 1993, ch. 350, § 1. While recognizing that the then-existing protection order process was a valuable tool to increase victim safety and to hold batterers accountable, the legislature understood the need to refine the process. LAWS 1993, CH. 350, § 1.

Thus, the legislature enacted RCW 26.50.035, which like RCW 10.99.040 and RCW 10.99.050, requires orders for protection to include notification to a defendant. RCW 26.50.035(1)(c) states:

⁶ LAWS 2000, CH. 119, § 15 renumbered this provision, which was originally enacted as RCW 26.05.060(g), as RCW 26.05.060(h).

The order for protection form shall include, in a conspicuous location, notice of criminal penalties resulting from violation of the order, and the following statement: "You can be arrested even if the person or persons who obtained the order invite or allow you to violate the order's prohibitions. The respondent has the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order upon written application."

As part of its statutory scheme to address domestic violence crimes, the legislature adopted the Foreign Protection Order Full Faith and Credit Act, chapter 26.52 RCW, to assist the federal Violence Against Women Act in the enforcement of civil and criminal foreign protection orders. LAWS OF 1999, CH. 184, § 2. The intent of the legislation is to remove barriers faced by persons entitled to protection under a foreign protection order and to ensure that violations of those orders will be criminally prosecuted in Washington. RCW 26.52.005.

ii. Case law.

This Court has adhered to the plain language of the mandatory arrest provisions. Thus, where a police officer previously had legal grounds to make an arrest, he generally had considerable discretion to do so; however, in regard to domestic violence, once an officer had probable cause to believe that a

person had committed a crime, the legislature made arrest mandatory.⁷ See Donaldson v. City of Seattle, 65 Wn. App. 661, 670, 831 P.2d 1098 (1992) (citing RCW 10.31 and RCW 10.99). After an exhaustive examination of the statutory scheme of the domestic violence laws, this Court held over ten years ago that a willful violation of a restraint provision that prohibited any contact with a victim of domestic violence constituted a criminal offense. Jacques v. Sharp, 83 Wn. App. 532, 542-43, 922 P.2d 145 (1996).

Our supreme court has recognized the legislative intent of the statutory scheme as a whole. See, e.g., State v. Dejarlais, 136 Wn.2d 939, 969 P.2d 90 (1998). In that case, the defendant argued that consent or reconciliation should be a defense to the crime of violation of a court order. However, the court recognized that a domestic violence protection order does not protect merely the "private right" of the person named as petitioner in the order; the statutes pursuant to which such orders are issued reflect the legislature's belief that the public has an interest in preventing domestic violence. In rejecting the defendant's argument, the

⁷ The exceptions to the common law requirement that a misdemeanor must be committed in the presence of an officer for an arrest without a warrant address social problems either not recognized or not present during common law, such as domestic violence. State v. Walker, 157 Wn.2d 307, 316-17, 138 P.3d 113 (2006).

supreme court said, “[a]llowing consent as a defense is not only inconsistent with, but would undermine, [the legislative] intent.” Id. at 944. The supreme court looked at the statutory scheme as a whole, which it found reflected the legislature’s clear intent to criminalize violation of court orders for protection. Id.⁸

The court further noted the mandatory arrest requirements under Chapter 10.99 RCW, and observed that the law was enacted because the legislature “‘recognize[s] the importance of domestic violence as a serious crime against society’ and intends ‘that criminal laws be enforced without regard to whether the persons involved are or were married, cohabiting, or involved in a relationship.’” Dejarlais, at 945 (quoting RCW 10.99.010). Moreover, the mandatory arrest provision does not contain an exception for consensual contacts. Dejarlais, at 945.

In rejecting Dejarlais’s argument that disallowing consent as a defense would impede efforts at reconciliation, the supreme court pointed out that a court could draft a no-contact order that would allow for telephonic contact or contact through third parties. Id. Nothing in the statute requires that the order prohibit all contact. Id.

⁸ See also State v. Dejarlais, 88 Wn. App. 297, 302-03, 944 P.2d 1110 (1997) (discussing the legislative intent and public policy underpinning RCW 26.50.110), affirmed 136 Wn.2d 939 (1998).

However, absent a modification of the court order, **all** contact is prohibited unless otherwise provided for in the court's order. See id. (emphasis added).

c. RCW 26.50.110(1) Does Not Roll Back
Protections For Victims Of Domestic Violence.

Bunker was charged with the crime of domestic violence FVCO, pursuant to RCW 26.50.110(1). The statute in effect at the time of Bunker's crime provided:

Whenever an order is granted under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or there is a valid foreign protection order as defined in RCW 26.52.020, and the respondent or person to be restrained knows of the order, a violation of the restraint provisions, or of a provision excluding the person from a residence, workplace, school, or day care, or of a provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or of a provision of a foreign protection order specifically indicating that a violation will be a crime, *for which an arrest is required under RCW 10.31.100(2) (a) or (b)*,

is a gross misdemeanor except as provided in subsections (4) and (5) of this section.⁹

Former RCW 26.50.110(1) (*italicize added*).

The grammatically awkward structure of the sentence in subsection (1) has triggered this appeal. In general, the intent of the legislature is to be deduced from what it said. In re Kurtzman's Estate, 65 Wn.2d 260, 263, 396 P.2d 786 (1964). However, in a case such as this, where if the italicized phrase is read as a modifying clause—whether it modifies each previous clause or only the last antecedent clause—the result is contrary to the codified statement of the legislative intent, the legislative history, the statutory scheme, and the relevant case law, then this Court may resort to a rarely used principle of statutory interpretation.

The phrase, "for which an arrest is required," does not affect what behavior constitutes a violation of an order for protection—that is, it does not modify any of the preceding clauses or state the

⁹ In this instance, the allegation was a felony because Bunker had two prior convictions for violations of domestic violence court orders for protections. Ex. 1, 2, 8. See RCW 26.50.110(5), which states in pertinent part:

A violation of a court order issued under this chapter is a class C felony if the offender has at least two previous convictions for violating the provisions of a no-contact order issued under chapter 10.99 RCW, a domestic violence protection order issued under chapter 26.09, 26.10, or 26.26 RCW or this chapter, or any federal or out-of-state order that is comparable to a no-contact or protection order issued under Washington law.

nature or cause of an accusation—rather, it is an extraneous reiteration of the legislature’s determination that once a police officer has probable cause to believe that a person has committed a crime of domestic violence, an arrest is required.¹⁰ “RCW 26.50.110(1) refers to RCW 10.31.100(2)(b)”. State v. Esquivel, 132 Wn. App. 316, 326, 132 P.3d 751 (2006).

The legislature has expanded warrantless arrest authority for a person whom the police have probable cause to believe violated the restraint provisions for an order of protection. RCW 10.31.100(2)(a), (b); RCW 26.50.110(2). See State v. Walker, 157 Wn.2d 307, 317, 138 P.3d 113 (2006) (legislature under its police power may classify crimes as either felonies or misdemeanors and thus, initially determine the arrest power needed).

Thus, the legislature, through a grant of police power authorized warrantless arrests under certain circumstances. See RCW 10.31.100. Consistent with its statutory scheme as a whole,

¹⁰ RCW 10.31.100 is a subsection of Title 10: Criminal Procedure. That section of the Revised Code of Washington does not address the nature and cause of an accusation, i.e. a crime, as required by U.S. CONST. AMEND. VI; CONST. ART. I, SEC. 22 (AMEND.10). Moreover, it is the court, not the jury that determines whether probable cause existed at the time of the warrantless arrest. See CrR 3.2.1 (“The court shall determine probable cause”); see also CrR 3.6 (pretrial court determines whether probable cause existed for warrantless seizure). An officer must base a warrantless arrest on probable cause (either under RCW 26.50.110(2) or RCW 10.31.100(2)) and whether probable cause existed at the time of the arrest is a matter of law preliminarily resolved by the trial court.

the legislature has mandated that the police use that authority whenever there is probable cause to believe that a person has committed a domestic violence crime. That intent is clear throughout its codified statements of intent, the statutes that the legislature has enacted and the cases that have interpreted the domestic violence laws.

Moreover, the legislature recently reaffirmed its legislative intent. Substitute House Bill 1642 removed the language "for which an arrest is required under RCW 10.31.100(2). See Appendix A (LAWS 2007, CH. 173).¹¹ The legislative intent is explicit:

The legislature finds this act necessary to restore and make clear its intent that a willful violation of a no-contact provision of a court order is a *criminal offense* and shall be enforced accordingly to preserve the integrity and intent of the domestic violence act.

Appendix A. The legislature stated that it was **always its intent** for willful violations of a no-contact provision of a court order to constitute a criminal offense:

This act is not intended to broaden the scope of law enforcement power or effectuate any substantive change to any provision in the Revised Code of Washington.

¹¹Substitute House Bill 1642 was passed by the House of Representatives on February 28, 2007 (Yeas: 97; Nays: 0). The Senate passed the bill on April 10, 2007 (Yeas: 49; Nays: 0). The law became effective on July 22, 2007. See Appendix A.

Laws of 2007, ch. 173, § 1 (Appendix A).

This Court may use the statute's current version to resolve the issue that Bunker has raised because it states the legislature's original intent more clearly and completely. See In re Detention of Elmore v. State, slip op. no. 79208-9 (filed October 18, 2007). In Elmore, our supreme court clarified that an amendment may apply retroactively if "the amendment is curative and 'clarifies or technically corrects ambiguous statutory language.'" Elmore, 79208-9, slip. op. at 8 (citations omitted). Furthermore, a court may consider the amendment curative and remedial if the amendment "clarifies . . . an ambiguous statute without changing prior case law constructions of the statute." Id. at 9 (citations omitted).

Significantly, the legislature did not amend RCW 26.50.110(1) after this Court's decision in Sharp, holding that a willful violation of the restraint provision--or the no-contact with the victim of domestic violence provision--constituted a criminal offense. See In re Personal Restraint of Quackenbush, 142 Wn.2d 928, 936, 16 P.3d 638 (2001) (the legislature is presumed to know how the courts have construed and applied the statute.). Thus, in this case, the recent statutory amendment to RCW 26.50.110 is

clarifying—it did not make any substantive changes to the law.

LAWS 2007, CH. 173, § 1.

Bunker cites to the history of the 2000 amendments to RCW 26.50.110 as support for his position that the legislature did not intend to criminalize contacts other than knowingly coming within or knowingly remaining a specified distance from a prohibited place or person. See Br. of App. at 10-11. However, Bunker misapprehends the 2000 amendments. See Appendix B (WASHINGTON HOUSE BILL REPORT, 2000 REGULAR SESSION, SB 6400).

The two stated purposes of the bill were to: (1) consolidate all violations of court orders under one statute, and (2) authorize the Department of Social and Health Services to seek a domestic violence protection order on behalf of vulnerable adults. Appendix B. Although there was testimony both in support of and against the amendment, the intent of the legislature was clear: "This bill is a collaborative effort that will **strengthen domestic violence laws.**" Appendix B at 7 (emphasis supplied). Nothing in the legislative history of RCW 26.50.110 supports Bunker's statutory interpretation; this Court should, therefore, reject Bunker's claim.

Moreover, Bunker's contention that a phone call may violate the terms of the order, but does not constitute a crime, ignores the

mandatory arrest provision of RCW 26.50.110(2)—in addition to the plain language of both subsection (1) of the statute and the actual no-contact order itself. See, e.g., Ex. 1, 2. Likewise, it ignores the plain language of RCW 10.99.040, RCW 10.99.050, and RCW 10.99.020. Yet, legislative definitions provided by the statutes are controlling. Sullivan, 143 Wn.2d at 175. See also Esquivel, 132 Wn. App. at 326 (under the whole statutory scheme, the defendant's attempted telephonic contact with the petitioner (leaving messages on answering machine), in violation of a foreign order for protection, constituted a criminal offense under RCW 26.50.110(1)).

Because the ambiguity can be resolved and the legislative intent is clear, the rule of lenity does not apply. See In re Post Sentencing Review of Charles, 135 Wn.2d 239, 250 n.4, 955 P.2d 798 (1998).

Bunker urges this Court to apply the "last antecedent" rule in interpreting RCW 26.50.110(1). The application of this rule is the predicate to his "essential element" argument.

This Court should decline to read the phrase, "for which an arrest is required" as anything other than an extraneous reference to RCW 10.31.100(2) that it is imperative to delete to make rational

sense of the statute. To read the language as a modifying clause undermines the legislative intent and leads to unlikely, absurd or strained consequences.

The last antecedent rule is simply another rule that can assist courts in discerning legislative intent *where no contrary intention appears in a statute*. Fernandez, 155 Wn.2d at 593. The rule is not inflexible or uniformly binding. State v. McGee, 122 Wn.2d 783, 788-89, 864 P.2d 912 (1993).

Application of the general rule, that "qualifying words and phrases refer to the last antecedent," renders words within the statute meaningless or superfluous, contrary to statutory interpretation. See Whatcom County v. City of Bellingham, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996) ("Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous."). If "for which an arrest is required under RCW 10.31.100(2) (a) or (b)," refers to the last antecedent: "a violation of a provision of a foreign protection order specifically indicating that a violation will be a crime," then the language RCW 10.31.100(2)(a) is meaningless or superfluous because that subsection does not apply to foreign protection orders. On the other hand, RCW 10.31.100(2)(b)

specifically applies to foreign protection orders. Thus, the phrase cannot modify the last antecedent clause.¹²

The last antecedent rule further provides that “the presence of a comma before the qualifying phrase is evidence the qualifier is intended to apply to all antecedents instead of only the immediately preceding one.” In re Sehome Park Care Center, Inc., 127 Wn.2d 774, 781, 903 P.2d 443 (1995). However, to accept Bunker's characterization of the phrase as a modifier, and to then apply it to all antecedents, would contravene the legislative intent and lead to “unlikely, absurd or strained consequences.” See McDougal, 120 Wn.2d at 350.

Significantly, Bunker's interpretation would decriminalize violations of restraint provisions of no-contact orders and leave victims without the ability to have the violations criminally prosecuted and judicially enforced. This result is contrary to the legislative intent, the statutory scheme, and the relevant case law.

¹² Bunker cannot argue that it is imperative for this Court to simply delete the reference to RCW 10.31.100(2)(a) to make rational sense of the statute because of the legislature's language in the 2007 amendment. The legislature specifically said: “The legislature finds this act necessary **to restore** and make clear its intent that a willful violation of a no-contact provision of a court order is a criminal offense and shall be enforced accordingly to preserve the integrity and intent of the domestic violence act.” Thus, if its original intent had been for the phrase at issue to modify only foreign protection orders, then when the legislature amended the statute, it would have “restored” language providing, “for which an arrest is required under RCW 10.31.100(2)(b).”

Moreover, to apply the last antecedent rule as Bunker invites this Court to do, could result in the following unlikely, absurd or strained consequence: (1) a petitioner who has a foreign no-contact order—e.g., a no-contact order issued by a court in Puerto Rico—would have **greater** protection than a petitioner whose order was issued by a Washington court; and (2) the no-contact order would have to delineate every possible future location of the petitioner for the duration of the order. See RCW 10.31.100(2) (in order for the contact to be that "for which an arrest is required," the defendant must "knowingly come within, or knowingly remain within, a specified distance of a location...."). Thus, unless the issuing judge was prescient, and able to list all of the future locations of the victim, under Bunker's reading of the statute, RCW 26.50.110 could offer no meaningful protection to petitioners. Accordingly, Bunker's reading leads to unlikely, absurd or strained consequences; it is, therefore, untenable. See McDougal, 120 Wn.2d at 350.

d. The Charging Document, Jury Instructions,
And The Sufficiency Of The Evidence.

Bunker's claim, that the information omitted an essential element, rests on the application of the "last antecedent rule,"

which as discussed above does not apply because the phrase "for which an arrest is required" does not state the nature and cause of the accusation. Because Bunker is mistaken as to the added element, he is similarly mistaken that the charging document and jury instructions were deficient. These documents contained all statutory elements.

Finally, in conjunction with each of the above arguments, Bunker contends, that because the State neither charged nor proved the "essential element" that the violation of the court order involved an act or threat of violence or was committed by entering or remaining within a prohibited area, the evidence was insufficient to convict. This Court should reject Bunker's argument for each of the reasons set forth above, and because it also defies the plain language of the very no-contact orders that the jury found he had previously violated. See Ex. 1, 2.

There is sufficient evidence if, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the crime's essential elements beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980). Here, the plain language of the no-contact orders that the jury found Bunker had violated on two prior occasions state in unambiguous

terms that, "Respondent is RESTRAINED from coming near and from having *any contact whatsoever . . .* with Petitioner," and that "[v]iolation of the provisions of the order with actual notice of its terms is a criminal offense under Chapter 26.50 RCW and will subject a violator to arrest." Ex. 1, 2, 8 (*italicize added*).

Furthermore, the no-contact orders put Bunker on notice that "[a] violation of this order is a class C felony if the defendant has at least 2 previous convictions for violating a protection order. . . ." Ex. 1, 2. Accordingly, not only does Bunker's argument defy the plain language of the statute and legislative intent, it flies in the face of the plain language printed on the no-contact orders that he signed, acknowledging actual notice of the terms therein. Ex. 1, 2. Thus, because the State established that on August 18, 2005, Bunker willfully had contact with Hiatt, the contact was in violation of court orders about which Bunker had knowledge, and that Bunker had been convicted on two prior occasions of violating a court order, sufficient evidence supports the jury's conclusion that Bunker committed the crime of FVCO. Accordingly, this Court should affirm Bunker's conviction for FVCO.

2. THERE WAS NO SUBSTANTIAL AND COMPELLING REASON FOR THE COURT TO DEPART FROM A STANDARD RANGE SENTENCE.

Bunker contends that the trial court failed to recognize that it had discretion to impose a mitigated exceptional sentence. Bunker's claim is without merit. The issue is not one of discretion; rather, as a matter of law, there was no substantial and compelling reason for the court to impose a sentence outside the standard range. Accordingly, this Court should reject Bunker's argument and affirm the trial court's sentence.

Generally, a sentencing court must impose a sentence within the standard range set out by the Legislature. RCW 9.94A.505(2)(a)(i). If the sentencing court finds "substantial and compelling reasons justifying an exceptional sentence," the court may impose a sentence outside the standard range. State v. Nordby, 106 Wn.2d 514, 518, 723 P.2d 1117 (1986); RCW 9.94A.535. The Legislature has stated a nonexclusive list of mitigating factors that can support a sentence outside the standard range. RCW 9.94A.535. Any valid mitigating factor must relate to the defendant's crime and distinguish it from other crimes in the same statutory category. State v. Law, 154 Wn.2d 85, 98, 110

P.3d 717 (2005). See also RCW 9.94A.340 (sentences must be imposed "without discrimination as to any element that does not relate to the crime or the previous record of the defendant.")

Bunker sought a sentence outside his standard range on the basis that Hiatt was, "to a significant degree . . . an initiator, willing participant, aggressor, or provoker of the incident." CP 47-48 (citing RCW 9.94A.535(1)(a)). However, victims in domestic violence relationships often return to their batterer; the law specifically provides that consent is not a defense to the crime of violating a domestic violence order for protection. Dejarlais, 136 Wn.2d at 942; CP 38.

As Division II of the Court of Appeals noted, the legislature has clearly indicated that there is a public interest in domestic violence protection orders—"a court order is issued in the hope that this will reduce the abuser's power over the victim." State v. Dejarlais, 88 Wn. App. 297, 302, 944 P.2d 1110 (1997). The court stated:

Further, to allow reconciliation to void a court order in domestic violence issues would be to ignore the role reconciliation plays in the cycle of violence. Our courts have recognized the battered woman syndrome and that forgiveness and reconciliation occurs routinely after an episode of violence and prior to another episode of increased violence. These

victims are vulnerable and in a condition of “learned helplessness.” To allow reconciliation to void a domestic violence protection order without court approval would be a reversion to the past, ignoring the increase of violence that prompted this legislation, and would subject victims to increasing risk, which they may be unable to avoid because of the “learned helplessness” of the syndrome.

Dejarlais, 88 Wn. App at 303 (internal citations omitted).

Thus, if public policy and legislative intent dictate that reconciliation and consent should not void a domestic violence protection order, see Dejarlais, 88 Wn. App at 303, then as a matter of law, reconciliation and consent are not mitigating factors that provide a substantial and compelling reason, justifying an exceptional sentence outside a defendant's standard range. Accordingly, Bunker's argument fails.

Moreover, despite arguing the “equities of interpersonal relationships,” counsel for Bunker acknowledged that the law “is clear in this matter.” 12/22/06 RP 6. Likewise the court recognized that it could “[t]hink of some compelling circumstances [that would justify an exceptional sentence], I just don’t have any evidence for it here.” 12/22/06 RP 11.

The court did not fail to recognize that the law affords judges discretion; rather, the court understood that, as a matter of law, it

could not depart from a standard range sentence where the record established that Bunker was under court order not to have contact with Hiatt and he disregarded the order, irrespective of the arguably consensual nature of the contact. 12/22/06 RP 10, 17-18.

Consequently, this Court should affirm Bunker's standard range sentence.

D. CONCLUSION

For the reasons stated above, the State respectfully asks this Court to affirm Bunker's judgment and sentence.

DATED this 24 day of October, 2007.

Respectfully submitted,

NORM MALENG
King County Prosecuting Attorney
DANIEL T. SATTERBERG
Interim King County Prosecuting Attorney

By: 
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APPENDIX A

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1642

Chapter 173, Laws of 2007

60th Legislature
2007 Regular Session

NO-CONTACT ORDERS--CRIMINAL VIOLATIONS

EFFECTIVE DATE: 07/22/07

Passed by the House February 28, 2007
Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 10, 2007
Yeas 49 Nays 0

BRAD OWEN

President of the Senate

Approved April 21, 2007, 10:49 a.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is SUBSTITUTE HOUSE BILL 1642 as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

April 23, 2007

Secretary of State
State of Washington

SUBSTITUTE HOUSE BILL 1642

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By House Committee on Judiciary (originally sponsored by
Representatives Pedersen, Lantz, Williams, Moeller, Wood, Kirby,
O'Brien, Chase, Ormsby and Green)

READ FIRST TIME 02/16/07.

1 AN ACT Relating to criminal violations of no-contact orders,
2 protection orders, and restraining orders; amending RCW 26.50.110;
3 creating a new section; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. Sec. 1. The legislature finds this act necessary to
6 restore and make clear its intent that a willful violation of a
7 no-contact provision of a court order is a criminal offense and shall
8 be enforced accordingly to preserve the integrity and intent of the
9 domestic violence act. This act is not intended to broaden the scope
10 of law enforcement power or effectuate any substantive change to any
11 criminal provision in the Revised Code of Washington.

12 Sec. 2. RCW 26.50.110 and 2006 c 138 s 25 are each amended to read
13 as follows:

14 (1) (a) Whenever an order is granted under this chapter, chapter
15 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or there is a valid
16 foreign protection order as defined in RCW 26.52.020, and the
17 respondent or person to be restrained knows of the order, a violation

1 of any of the following provisions of the order is a gross misdemeanor,
2 except as provided in subsections (4) and (5) of this section:

3 (i) The restraint provisions(~~(7 or ef)~~) prohibiting acts or threats
4 of violence against, or stalking of, a protected party, or restraint
5 provisions prohibiting contact with a protected party;

6 (ii) A provision excluding the person from a residence, workplace,
7 school, or day care(~~(7 or ef)~~);

8 (iii) A provision prohibiting a person from knowingly coming
9 within, or knowingly remaining within, a specified distance of a
10 location(~~(7)~~); or (~~ef~~)

11 (iv) A provision of a foreign protection order specifically
12 indicating that a violation will be a crime(~~(7 for which an arrest is~~
13 required under RCW 10.31.100(2) (a) or (b), is a gross misdemeanor
14 except as provided in subsections (4) and (5) of this section).

15 (b) Upon conviction, and in addition to any other penalties
16 provided by law, the court may require that the respondent submit to
17 electronic monitoring. The court shall specify who shall provide the
18 electronic monitoring services, and the terms under which the
19 monitoring shall be performed. The order also may include a
20 requirement that the respondent pay the costs of the monitoring. The
21 court shall consider the ability of the convicted person to pay for
22 electronic monitoring.

23 (2) A peace officer shall arrest without a warrant and take into
24 custody a person whom the peace officer has probable cause to believe
25 has violated an order issued under this chapter, chapter 7.90, 10.99,
26 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order
27 as defined in RCW 26.52.020, that restrains the person or excludes the
28 person from a residence, workplace, school, or day care, or prohibits
29 the person from knowingly coming within, or knowingly remaining within,
30 a specified distance of a location, if the person restrained knows of
31 the order. Presence of the order in the law enforcement computer-based
32 criminal intelligence information system is not the only means of
33 establishing knowledge of the order.

34 (3) A violation of an order issued under this chapter, chapter
35 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign
36 protection order as defined in RCW 26.52.020, shall also constitute
37 contempt of court, and is subject to the penalties prescribed by law.

1 (4) Any assault that is a violation of an order issued under this
2 chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of
3 a valid foreign protection order as defined in RCW 26.52.020, and that
4 does not amount to assault in the first or second degree under RCW
5 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in
6 violation of such an order that is reckless and creates a substantial
7 risk of death or serious physical injury to another person is a class
8 C felony.

9 (5) A violation of a court order issued under this chapter, chapter
10 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign
11 protection order as defined in RCW 26.52.020, is a class C felony if
12 the offender has at least two previous convictions for violating the
13 provisions of an order issued under this chapter, chapter 7.90, 10.99,
14 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order
15 as defined in RCW 26.52.020. The previous convictions may involve the
16 same victim or other victims specifically protected by the orders the
17 offender violated.

18 (6) Upon the filing of an affidavit by the petitioner or any peace
19 officer alleging that the respondent has violated an order granted
20 under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34
21 RCW, or a valid foreign protection order as defined in RCW 26.52.020,
22 the court may issue an order to the respondent, requiring the
23 respondent to appear and show cause within fourteen days why the
24 respondent should not be found in contempt of court and punished
25 accordingly. The hearing may be held in the court of any county or
26 municipality in which the petitioner or respondent temporarily or
27 permanently resides at the time of the alleged violation.

Passed by the House February 28, 2007.

Passed by the Senate April 10, 2007.

Approved by the Governor April 21, 2007.

Filed in Office of Secretary of State April 23, 2007.

APPENDIX B

Westlaw.

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Washington House Bill Report, 2000 Regular Session, Senate Bill 6400

March 3, 2000

Washington House of Representatives

Fifty-sixth Legislature, Second Regular Session, 2000

As Passed House - Amended:

March 3, 2000

Title: An act relating to domestic violence.

Brief Description: Changing provisions relating to domestic violence.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Wojahn, Costa, Kohl-Welles, Winsley, Rasmussen and McAuliffe; by request of Governor Locke).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/18/00, 2/23/00 [DPA];

Appropriations: 2/26/00, 2/28/00 [DPA(APP w/o CJC)s].

Floor Activity:

Passed House - Amended: 3/3/00, 98-0.

Brief Summary of Engrossed Second Substitute Bill

(As Amended by House Committee)

* Authorizes courts to issue court orders that restrain parties from knowingly coming within or remaining within a specified distance of a specified location.

* Consolidates all violations of court orders in one uniform section of the statute.

* Authorizes the Department of Social and Health Services (DSHS) to seek a domestic violence protection order on behalf of and with the consent of any vulnerable adult.

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HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass. Signed by 8 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Cairnes, Republican Vice Chair; Lovick, Democratic Vice Chair; B. Chandler; Constantine; Kagi and Koster.

Staff: Yvonne Walker (786-7841).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Criminal Justice & Corrections. Signed by 31 members: Representatives Huff, Republican Co-Chair; H. Sommers, Democratic Co-Chair; Barlean, Republican Vice Chair; Doumit, Democratic Vice Chair; D. Schmidt, Republican Vice Chair; Alexander; Benson; Clements; Cody; Crouse; Gombosky; Grant; Kagi; Keiser; Kenney; Kessler; Lambert; Linville; Lisk; Mastin; McIntire; McMorris; Mulliken; Parlette; Regala; Rockefeller; Ruderman; Sullivan; Sump; Tokuda and Wensman.

Staff: Heather Flodstrom (786-7391).

Background:

There are several types of orders a court may grant that restrict a person's ability to have contact with another: (1) protection orders; (2) no-contact orders; (3) restraining orders; and (4) foreign protection orders.

{+ Protection Orders +} Protection orders can be issued by a court in civil proceedings. There are two types of protection orders authorized by statute: domestic violence protection orders and anti-harassment protection orders.

{+ +} Domestic Violence Protection Orders- A victim of domestic violence can obtain a domestic violence protection order against a respondent. The order can provide several types of relief including electronic monitoring, batterer's treatment, and a requirement that the respondent refrain from contacting the petitioner. A petitioner can obtain a temporary ex parte domestic violence protection order under certain circumstances. Violation of a domestic violence protection order is a gross misdemeanor unless the respondent has two prior convictions for violating a domestic violence protection order or other similar federal or out-of-state order, in which case the violation is a class C felony.

A court can grant a domestic violence protection order in a proceeding convened specifically for that purpose. A court can also grant a domestic violence protection order as part of a divorce proceeding, a non-parental action for child custody, or a paternity action. A domestic violence protection order issued in a proceeding, convened specifically for that purpose, that restrains the respondent from having contact with his or her minor children may not last more than one year. If the court finds that the respondent would resume acts of domestic violence after the order expires, the order may last more than a year.

{+ No-Contact Orders +}

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No-contact orders can be issued by a court in a criminal proceeding. No-contact orders are generally issued by the court when a defendant is released from custody prior to trial or as part of the defendant's sentence. There are two types of prosecutions for which no-contact orders are statutorily authorized: prosecutions for criminal harassment and prosecutions for crimes involving domestic violence.

Domestic Violence No-Contact Orders- A law enforcement officer must enforce a no-contact order issued as part of a prosecution for a crime involving domestic violence. Violation of such a no-contact order is a gross misdemeanor, unless the defendant has two previous convictions for violating a domestic violence protection order or other similar federal or out-of-state order, in which case the violation is a class C felony.

{+ Restraining Orders +}

As part of a civil proceeding, a court may also issue a restraining order that enjoins the person subject to the order from contacting another party. Such restraining orders can be permanent or temporary. A court can grant a permanent or temporary restraining order as part of a divorce proceeding, a non-parental action for child custody, an action involving the abuse of a child or an adult dependent person, or a paternity action. A court can grant a temporary restraining order (and not a permanent restraining order) in connection with proceedings where there has been allegations of abuse of a child or a dependent adult person.

A violation of a restraining order issued as part of a divorce proceeding or an action involving the abuse of a child or an adult person is a misdemeanor. A violation of a restraining order issued as part of a non-parental action for child custody or a paternity action is a gross misdemeanor.

{+ Foreign Protection Orders +}

A foreign protection order is an injunction or similar order relating to domestic violence, harassment, sexual abuse, or stalking issued by a court of another state, territory, or possession of the United States, the Commonwealth of Puerto Rico, the District of Columbia, a United States military tribunal, or a tribal court. A violation of a foreign protection order is generally a gross misdemeanor, but becomes a class C felony in the following three circumstances: (1) the violation is an assault that does not amount to assault in the first- or second-degree; (2) the violation involved conduct that is reckless and creates a substantial risk of death or serious physical injury to another person; or (3) the offender has at least two prior convictions for violating the provisions of a no-contact order, a domestic violence protection order, or a comparable federal or out-of-state order.

{+ Courts +}

A computerized Judicial Information System (JIS) is available in each district, municipal, and superior court which is used to help prevent the issuance of competing protection orders in different courts and to give courts needed information for issuance of orders. The system includes the names of the parties and the case number for every domestic violence protection order issued, criminal

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no-contact order issued, and every restraining order that is issued as part of a divorce proceeding or a non-parental actions for child custody. The system does not contain foreign protection orders, orders issued on behalf of vulnerable adults, or restraining orders issued as part of paternity actions, an action involving the abuse of a child or an adult dependent person.

Summary of Amended Bill:

Courts are authorized to issue court orders prohibiting specific parties from knowingly coming within or knowingly remaining within a specified distance of a particular location. A police officer shall arrest any person who violates the restraint or exclusion provision of a court order relating to domestic violence.

In addition, effective July 1, 2000, violations of no-contact orders, foreign protection orders, and restraining orders will be subject to the violation penalties applied to domestic violence protection orders issued as part of civil proceedings. A violation of a domestic violence protection order is a gross misdemeanor unless the respondent has two prior convictions for violating an order, in which case the violation is a class C felony. Felony violations of domestic violence protection orders will continue to be ranked as a seriousness level V on the sentencing grid.

{+ Protection Orders +}

When determining whether to grant a domestic violence protection order, the courts are authorized to prohibit the parties from knowingly coming within or knowingly remaining within a specified distance of a specific location.

{+ No-Contact Orders +}

The penalties for violating a no-contact order issued during pre-trial or as part of a sentence are removed from the criminal domestic violence statute. The penalties are moved to a new section of law in order to consolidate all violations of domestic violence orders in a more uniform structure. As a result, violations of no-contact orders are subject to the same penalties applied to domestic violence protection orders.

{+ Restraining Orders +}

When determining whether to grant a temporary or a permanent restraining order, as part of a divorce proceeding, a non-parental action for child custody, or a paternity action, the courts are authorized to prohibit the parties from knowingly coming within or remaining within a specified distance of a specific location.

The penalties for violating the restraint and exclusion provisions of a restraining order issued as part of a divorce proceeding, a non-parental action for child custody, or a paternity action, are moved to a new section of law in order to consolidate all violations of domestic violence orders in a more uniform structure. Violations of restraining orders are subject to the same penalties applied to domestic violence protection orders. As a result of this move, a violation of a restraining order issued as part of a divorce proceeding is

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increased from a misdemeanor to a gross misdemeanor unless the respondent has two prior convictions for violating an order, in which case the violation is a class C felony.

{+ Foreign Protection Orders +}

The penalties for violating the restraint and exclusion provisions of a foreign protection order, are removed from the Foreign Protection Order Full Faith and Credit Act. The penalties are hence moved to a new section of law, in order to consolidate all violations of domestic violence orders in a more uniform structure. Violations of foreign protection orders are subject to the same penalties applied to domestic violence protection orders.

{+ Courts +}

All court orders issued for protection of a party must be entered in the JIS. When a guardian or the DSHS has petitioned for relief on behalf of a vulnerable adult, then the name of the vulnerable adult must be included in the database as a party, rather than the guardian or the department.

The Office of the Administrator for the Courts, must revise all informational brochures relating to court orders designed to assist petitioners, to specify the use of and process for obtaining, modifying, and terminating an order.

In addition, certificates of discharge received upon an offender's release from confinement, must not terminate his or her duty to comply with a court order. Courts must also immediately notify the proper law enforcement agency anytime a court order is modified or terminated. Upon receipt of an order that has been changed or terminated, the law enforcement agency must modify or remove the order from any computer-based system that is used to list outstanding warrants.

Vulnerable Adults- The DSHS, may seek a domestic violence protection order from the courts on behalf of and with the consent of any vulnerable adult. The courts are authorized to issue an order of protection issued on behalf of a vulnerable adult that prohibits the respondent from knowingly coming within or knowingly remaining within a specified distance from a particular location. An order of protection issued on behalf of a vulnerable adult must include notice of the criminal penalties imposed for violating the restraint provisions of the court order.

A vulnerable adult is defined as any person 60 years or older who has the functional, mental, or physical inability to care for himself/herself. Vulnerable adults include anyone who is developmentally disabled, who is living in a boarding home, nursing home, adult family home, residential facility, or other licensed facility or a person receiving services from a home health, hospice, or a licensed home care agency.

Definition- The definition of domestic violence includes violations of court orders relating to domestic violence in all types of proceedings.

Mandatory Fines- A mandatory fine of \$500 for gross misdemeanors and \$250 for

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misdemeanors, must be imposed on any offender convicted of a domestic violence crime in district or municipal court. The court must remit the assessments imposed and collected to the city or county treasurer accordingly. The city or county treasurer must remit 50 percent of the funds to the state treasurer for deposit in the public safety and education account. The remaining 50 percent of the funds received must be retained by the city or county for the purposes of reimbursing the city or county for the costs associated with implementing this act. Effective immediately, the mandatory fines apply to violations of all court orders regardless of the date the court issued the order.

Department of Social & Health Services- The DSHS is authorized to contract with public or private non-profit groups or organizations with experience and expertise in the field of domestic violence. These groups must develop and provide advocacy, community education, and specialized services to under-served victims of domestic violence.

In addition, the department must periodically evaluate domestic violence perpetrator programs, previously approved for court referral, to determine whether they are in compliance with existing standards.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: (Criminal Justice & Corrections) This bill is a companion to a House bill the committee heard a week or so ago with three significant differences. First, the Senate simplified the financing provisions in the bill to provide a greater share of the revenue, from the penalty assessments, to local government and put the remaining revenue in the state's public education and safety account to fund domestic violence prevention programs. Second, language was added to protect people accused of violating court orders by defining that a violation is a violation if and only if someone knowingly comes within or knowingly remains a specified distance from a prohibited place or person. Third, the Senate created a loophole in the bill that enables batterers to get away with intimidating or harassing the victims by explaining that their contact was reasonable. This section is a get out of jail free card for batterers.

The House, however included other good provisions in its version of the bill that the Senate did not, such as provisions for protecting children, removing expired or modified court orders from databases, and updating the brochures that the courts provide to victims.

This bill provides significant protections for victims of domestic violence and allows judges to craft protection orders carefully and properly so law enforcement can better enforce the orders.

(Appropriations) This bill is a collaborative effort that will strengthen domestic violence laws. The funding generated in this bill will be used for

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domestic violence programs and services to domestic violence victims at the state level. It also creates a new funding source for cities and counties without requiring any extra services, because the floating bubble provisions have been removed.

Testimony Against: (Criminal Justice & Corrections) While the Senate bill adds an affirmative defense, if the victim initiated contact, the bill still allows immediate mandatory arrest for any violation. An affirmative defense only comes into play after a criminal prosecution has begun. This is still too much criminalization and too much power to be vested in one person over another.

More troubling is the fact that the language referring to violations of all family law orders, criminalizes every restraint in every order (note: this has been corrected in the House striker to the Senate bill).

Criminalizing court orders is not the answer. Laws already exist that give police officers the tools they need to take action they deem necessary at any scene (e.g., stalking, harassment, assault, property destruction, and protection orders). It is hoped that the Legislature would not further overburden our criminal justice systems which already cannot adequately handle the valid criminal cases brought in front of them.

The state needs to enforce more communication and dispute resolution meetings instead of authorizing the issuance of more protection orders. Court orders prohibit people from talking to each other and working out their differences.

(Appropriations) This bill is unfair to the perpetrators of domestic violence. Restraining orders should apply to both parties so that neither party can antagonize the other. Children should be able to see their parents regardless of a restraining order that prohibits the parents from seeing each other. The Legislature should make sure to institute checks and balances in the domestic violence system and not allow as many court orders on people, because they take time and money to fight in court.

Testified: (Criminal Justice & Corrections) (In support) Dick VanWagenen, Governor's Policy Office; and Mary Pontarolo, Washington Coalition Against Domestic Violence.

(Opposed) Lisa Scott, Family Law Attorney TABS; Charlene Keys, citizen; Bill Harrington, American Father's Alliance; Clyde Wilbanks, citizen, and Greg Schmidt, citizen.

(Appropriations) (In support) Dick VanWagenen, Governor's Policy Office; and Sharon Case, Washington State Coalition Against Domestic Violence.

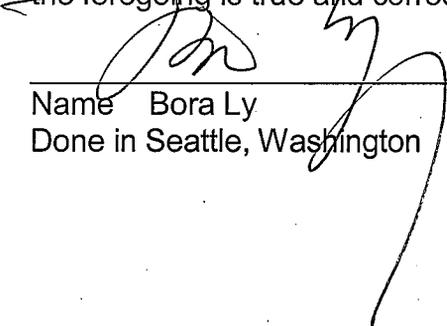
(Opposed) Steve McBride, citizen.

WA H.R. B. Rep., 2000 Reg. Sess. S.B. 6400
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Christopher Gibson, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of Brief of Respondent, in STATE V. LEO BUNKER, Cause No. 59322-6-1, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.


Name Bora Ly
Done in Seattle, Washington

10-24-2007
Date

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