

68879-1

68879-1

NO. 68879-1-I

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

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STATE OF WASHINGTON,

Respondent,

v.

STEPHEN M. KRUMM,

Appellant.

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
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BRIEF OF RESPONDENT

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## **I. ISSUES**

The crime of felony violation of no-contact order requires, as one element, proof of two prior convictions for violation of no-contact orders. Did the trial court abuse its discretion in admitting evidence of prior convictions and what they were for, when the defendant would not admit to them?

## **II. STATEMENT OF THE CASE**

### **A. FELONY VIOLATION OF NO CONTACT ORDER.**

Police were called to a multi-family residence at 3111 Lombard Ave in Everett at 1:30 a.m. on March 5, 2012 on a reported domestic-violence situation. Trial RP 67-69, 83-84, 87, 98-99, 107. They encountered Lynne Krumm, who had fled to a neighbor's room in the same building after having been assaulted by her husband, the defendant. Trial RP 46, 51-55, 56, 71, 90-91, 107-108. She exhibited bruising. Trial RP 54-55, 74, 96. There was a no-contact order, signed by the defendant, which Ms. Krumm knew about and thought the defendant knew about, too. Trial RP 47-48, 50, 56-57, 61, 72-73, 80-81; Ex. 7. The order prohibited the defendant from knowingly coming within, or knowingly remaining within, 150' of Ms. Krumm's residence or workplace. Ex. 7.

Ms. Krumm lived in room/apartment #5, but was at her neighbor's at #13 when police arrived. Trial RP 48, 90-91, 107-108. The door to #5 was locked, and no one answered when police repeatedly knocked and announced themselves. Trial RP 70-71, 78, 84-85, 99. Ms. Krumm gave them a key. Trial RP 72, 85. But each time officers tried to use it to open the door, the lock would slam back shut from the inside. Trial RP 72, 78, 85, 87. Officers could see the defendant inside through a window. Trial RP 86, 100-102. Finally they forced entry. Trial RP 78, 84-86. The defendant was inside, and arrested without incident. Trial RP 73, 86.

The defendant had two prior convictions for violation of a no-contact order. Trial RP 122; Exs. 5a, 12a, and 13a. The State verified the prior convictions involved the same individual through booking photographs on the earlier cases. Trial RP 123-27; Exs. 14, 15.

The defendant did not testify, and called no witnesses. Trial RP 131.

The jury was instructed they could find the defendant guilty of felony violation of a no-contact order if they found that the defendant either assaulted the protected party or had two prior convictions for violating a no-contact order. 1 CP 112 ("to convict"

instruction, specifying alternate means). The jury convicted, 1 CP 106, and answered “yes” on a special verdict form to whether the defendant and Ms. Krumm were in a domestic relationship. 1 CP 105. The defendant was sentenced within the standard range, and this appeal followed. 1 CP 1-16, 17-30.

**B. DEFENDANT’S ATTEMPTS TO PARTIALLY WAIVE JURY BY “STIPULATION.”**

The defendant initially hoped to keep out evidence of prior convictions on foundational grounds. Trial RP 25-29, 35-37. This proved unsuccessful. Id.; see also Exs. 5a, 12a, 13a. Counsel then asked for a bifurcated trial, proposing the jury first deliberate on whether there was a violation of no contact order, and if so, then deliberate if prior convictions were proved. Trial RP 30. The State responded it was proceeding on alternate means – that both an assault occurred, and that there were two prior convictions for violating a no-contact order – and that, under the latter means, the State had to prove, as an element of the single charged crime,<sup>1</sup> not only the prior convictions but what they were for. Trial RP 30-31. The trial court said there was no authority to bifurcate deliberations. Trial RP 31. The defense said in that case it “may seek to stipulate.” Id.

Attention then turned to the booking photos offered to prove identity. Trial RP 38-44. The State repeatedly said their admission would not be required if the defendant admitted the prior convictions were his. Trial RP 39, 41, 42. Instead, the defendant first sought to keep the photographs out altogether, without any admission. Trial RP 40. Failing that, the defense said it would “stipulate” only if evidence of the prior convictions did not go to the jury at all. Trial RP 41-42, 43. The trial court responded that the fact of two prior convictions having been for violating a no-contact order was an element of the crime that would need to go to the jury. Trial RP 42.

The defendant argued that, then, he should be able to waive jury as to that element. Trial RP 42-43. The court said it had never heard of a waiver as to only one element. It added:

Suppose the jury doesn't unanimously find there is an assault and find the defendant not guilty, there is nothing the court can do about that later if, in fact, there is evidence and there is a stipulation that there were two priors. It has to go to the jury.

Trial RP 43. It concluded:

If you want to stipulate and submit it to the jury, fine. Otherwise I will allow the photographs.

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<sup>1</sup> No instructions were given on any lesser-degree crime. See 1 CP 107-121.

Trial RP 43-44. Defense counsel then responded, “We are not stipulating, Your Honor.” Trial RP 44.

The defendant raised the issue of admitting the booking photos again on the second day of trial, and the trial court again ruled the pictures were admissible if they were associated with the prior convictions. Trial RP 120-22.

Documentary evidence of the prior convictions was admitted. The documents were redacted to take out anything beyond the fact of a prior conviction and what it was for. Trial RP 113-17, 136-39; compare Exs. 5, 12, and 13 (unredacted, not admitted) with Exs. 5a, 12a, 13a (admitted with redactions). The two booking photographs associated with the prior convictions were admitted as well. Trial RP 123-27; Exs. 14, 15.

### **III. ARGUMENT**

**A. SINCE THE DEFENDANT NEVER OFFERED TO ADMIT TO THE PRIOR CONVICTIONS, THE TRIAL COURT COMMITTED NO ERROR IN ADMITTING DOCUMENTARY EVIDENCE OF THE PRIOR CONVICTIONS AND BOOKING PHOTOGRAPHS ASSOCIATED WITH THE PRIOR CONVICTIONS.**

#### **1. Stipulations Generally – Requiring Mutual Assent.**

Admissions by an opposing party generally cannot be forced upon a litigant. Thus, a defendant’s offer “to concede a point generally cannot prevail over the Government’s choice to offer

evidence showing guilt and all the circumstances surrounding the offense.” State v. Johnson, 90 Wn. App. 54, 62, 950 P.2d 981 (1998).

[T]he State is not automatically precluded from presenting its evidence on an issue merely because the defendant offers a stipulation. . . [A] stipulation is an agreement between the parties to which there must be mutual assent. If the State does not agree to the stipulation, the issue remains open and the State can proceed to prove its case in the manner that it sees fit, subject to the restrictions of ER 403 and other rules of evidence. Stated in a slightly different way, the State is not bound to stipulate to a defendant’s offer unless unfair prejudice substantially outweighs the proffered evidence’s relevance. This principle has been overwhelmingly adopted both in the federal circuits and the state courts. It is also supported by sound policy, in that the State should be allowed to present the complete picture to the jury.

State v. Rice, 110 Wn.2d 577, 579, 757 P.2d 889 (1988), cert. denied, 491 U.S. 910 (1989) (footnote and citations omitted). Thus, in general, the State generally cannot be forced to accept an admission in lieu of presenting full evidence.

**2. Rule in Old Chief – Requiring State To Accept Defendant’s Admission Of Prior Conviction When Prior Conviction Must Be Proved.**

There is one exception to the general proposition stated above: when a defendant, in a prosecution where the fact of a prior conviction is an element of the current crime, offers to “stipulate” – that is, to formally admit – to a prior conviction in such a way as to

relieve the State of proving the prior as an element of the crime charged. Johnson, 90 Wn. App. at 62, citing Old Chief v. United States, 519 U.S. 172, 117 S. Ct. 644, 651, 136 L.Ed.2d 574 (1997). In such a case, it can be error for the prosecution, and ultimately an abuse of discretion for a trial court, to refuse to accept the admission. Old Chief, 519 U.S. at 174, 190-91; Johnson, 90 Wn. App. at 62-63.

While the cases often characterize such defense offers as “stipulations,” stipulations by definition require mutual assent. A defendant’s offer to “stipulate” in an Old Chief situation is more accurately characterized as an admission.<sup>2</sup>

Old Chief involved a prosecution for several crimes, including assault with a dangerous weapon and unlawful possession of a firearm by a convicted felon. The latter crime required proof of a prior felony conviction. The defendant had a prior conviction for assault causing serious bodily injury. The prosecutor rejected the defendant's offer to admit to a previous

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<sup>2</sup> Old Chief recognized the distinction when noting that “[a]lthough Old Chief’s formal offer to stipulate was, strictly, to enter a formal agreement with the Government to be given to the jury, even without the Government’s acceptance his proposal amounted to an offer to admit that the prior-conviction element was satisfied, and a defendant’s admission is, of course, good evidence.” Old Chief at 186.

unnamed felony conviction, and instead opted to prove it with a judgment and commitment that named the prior felony as an assault resulting in serious bodily injury. Old Chief, 519 U.S. at 174, 177. The trial court agreed the State could insist in doing so, and the Ninth Circuit affirmed. Id.

In reversing, the United States Supreme Court acknowledged the standard rule – that "a defendant's Rule 403 objection offering to concede a point generally cannot prevail over the Government's choice to offer evidence showing guilt and all the circumstances surrounding the offense." Id. at 183; see also Id. at 188-89. Nonetheless, the Old Chief court concluded it was an abuse of discretion when the trial court, as here, "spurns such an offer and admits the full record of a prior judgment, when the name or nature of the prior offense raises the risk of a verdict tainted by improper considerations, and when the purpose of the evidence is solely to prove the element of prior conviction." Id. at 174. "Congress . . . has made it plain that distinctions among generic felonies do not count for this purpose [of proving the prior]; the fact of the qualifying conviction is alone what matters under the [federal felon-in-possession] statute." Id. at 190. That being the case, "there is no cognizable difference between the evidentiary

significance of an admission and of the legitimately probative component of the official record the prosecution would prefer to place in evidence.” Id. at 191. It did not help matters for the Government that the nature of the prior conviction it elicited in proof was for assault, and one of the current charges was for assault as well. Id. at 185.

Johnson involved a prosecution for two assaults and for felon in unlawful possession of a firearm. Johnson, 90 Wn. App. at 59-60. This last crime required proof of a prior felony conviction for a “serious” offense. Johnson at 62; former RCW 9.41.040(1)(a). The defendant offered to admit to a prior felony conviction for a “violent” offense (by definition included within “serious” offenses) but the trial court ruled it would admit evidence, not only of Johnson’s prior conviction, but of what it was for. Id. at 60. The prior conviction was for rape. Id. Relying on the then-recent decision in Old Chief and citing ER 403, upon review the Johnson court held that the trial court abused its discretion in admitting the prior rape conviction to prove the element of a past “serious” felony conviction when Mr. Johnson had proffered an admission to the latter effect. Id. at 62-63.

One gleans certain principles from Old Chief and Johnson. Where the fact of a prior criminal conviction is an element of the current crime, and the defendant offers an admission to the jury that is complete proof of that element, it can be an abuse of discretion to reject the offer and proceed with fuller proof, when any probative value of the specifics of the prior crime is, by virtue of the full admission, outweighed by its prejudicial effect. This really is, then, simply application of ER 403 balancing analysis in the specific context of proving prior convictions as an element of the current crime. Old Chief, 519 U.S. at 179-86; Johnson, 90 Wn. App. at 62-63.

**3. Old Chief Offers Far Less Advantage To Defendants In A Prosecution Where The Name Or Nature Of the Prior Felony Conviction(s) Is A Statutory Element that Must Be Proved.**

In Old Chief, proving the fact of a prior felony conviction as an element of the federal felon-in-possession statute did not require further proof of “distinctions among generic felonies.” Old Chief, 519 U.S. at 190. Further (and unnecessary) proof of such distinctions – there, that the prior conviction was for an assault resulting in serious bodily injury – had little remaining probative value but retained considerable prejudicial effect. Id. at 174, 190-91. Similarly, in Johnson, all that had to be proved, to satisfy the

statutory element involving criminal history for unlawful possession of firearm, was the defendant's prior felony conviction for a "serious" offense. Johnson, 90 Wn. App. at 62; former RCW 9.41.040(1)(a).<sup>3</sup> The defendant's offer to admit to this – thereby providing full proof of that statutory element – rendered the further fact of the prior conviction having been for *rape* as having little probative value while retaining a great deal of prejudice. Id. at 60, 62-63.

But when a statutory element requiring proof of a prior conviction *also requires proof of the name or nature of the prior conviction*, the rule in Old Chief is of less advantage to a defendant. For example, communicating with a minor for immoral purposes, otherwise a gross misdemeanor, becomes a felony if the defendant has a prior conviction *for a sex offense*. RCW 9.68A.090(2); State v. Roswell, 165 Wn.2d 186, 190, 192, 196 P.3d 705 (2008); State v. Gladden, 116 Wn. App. 561, 563, 565, 66 P.3d 1095 (2003). And violating a no-contact order, otherwise a gross misdemeanor,

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<sup>3</sup> Unlawful possession of a firearm has since been broken out into two degrees: first degree when the prior conviction is for a "serious" felony offense, and second degree when the prior conviction is for any other felony, or for certain misdemeanors when committed as crimes of domestic violence. Compare RCW 9.41.040(1)(a) with RCW 9.41.040(2)(a). This amendment does not appreciably change the analysis, other than, if anything, making the rule in Old Chief all the more applicable when the current crime is unlawful possession of firearm 2° and the prior is simply any felony.

becomes a felony if the defendant either assaults the protected party or has two prior convictions *for violating a no-contact order*. RCW 26.50.110(4) (assault during current offense); RCW 26.50.110(5) (two prior convictions for violating no-contact order);<sup>4</sup> State v. Ortega, 134 Wn. App. 617, 623-25, 142 P.3d 175 (2006), review denied, 160 Wn.2d 1016 (2007). In both cases the name or nature of the prior conviction must be proved as part of the statutory elements of the crime.

Old Chief stands for the proposition that ER 403 can require sanitizing a prior conviction if the prior conviction is an element and if the defendant offers to formally and fully admit to it. But the more specific fact of a prior conviction's having been for a sex offense, in a prosecution for felony unlawful communication of a minor, or of two prior convictions as having been for violating a no-contact order, in a prosecution for felony violation of a no-contact order, *must be proved*. These facts go beyond the bare fact of conviction, and cannot be sanitized without foregoing proof of the statutory element altogether. And absent an admission from the defendant, offered to be admitted as evidence, that a statutory element involving prior convictions is proved in full, the State remains

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<sup>4</sup> The text of the statute is attached.

entitled to present its proof. Old Chief, 519 U.S. at 183, 188-89; Rice, 110 Wn.2d at 579; Johnson, 90 Wn. App. at 62.

The rule in Old Chief can still apply in this context, such as, for example, in a prosecution for felony violation of a no-contact order, when the records of prior convictions name the same victim, or show recent recidivism; or where, in a prosecution for felony communicating with a minor for immoral purposes, a trial court determines a prior conviction for a “sex offense” is less prejudicial than, and equally as probative as, a prior conviction for “rape of a child.” But for the rule to apply, to require sanitizing these particulars, the defendant must still first admit that the statutory element is proved, which means, in a prosecution for felony communicating with a minor, that he or she expressly admit to the prior offense as being for a sex offense, and, in a prosecution for felony violation of no-contact order, expressly admit the prior convictions were for violating no-contact orders.

**4. Attempts To Expand the Rule In Old Chief To Require Bifurcated Trials, Or Require A Trial Court To Redefine A Crime By Deleting An Element, Have Been Rejected.**

Since Old Chief affords a defendant far less advantage in prosecutions for felony violations of no-contact orders or prosecutions for felony violations of communicating with a minor, it

is precisely in these two areas where defendants have sought to turn the rule into something else – that is, into requiring a redefinition of the crime, or requiring bifurcated trials. These attempts have been rejected.

For example, a defendant is not entitled to compel acceptance of a “stipulation” that seeks, not to concede an element proved, but to remove an element from the jury’s consideration altogether. State v. Gladden, 116 Wn. App. at 563. Gladden was a prosecution for felony communicating with a minor for immoral purposes, which, as discussed above, required proof of a prior conviction for a felony sex offense. Gladden, 116 Wn. App. at 563, 565; RCW 9.68A.090. The defendant sought to “stipulate” that this statutory element be deleted, so the jury would not hear of it at all. Id. 563. The Gladden court reasoned he could not “stipulate” to deletion of that element and thereby prevent the jury from hearing evidence relating to his prior sex offense. Id. at 565–66. It held this was distinguishable from Old Chief and Johnson, since those defendants offered to admit to proof of the element, whereas here the defendant sought to remove the element altogether. Id. at 566.

In Ortega, a defendant offered to “stipulate” that if the jury convicted on the current charges of violating a no-contact order, the

court could then find they would be felonies. State v. Ortega, 134 Wn. App. at 623. He sought thereby to keep the jury from hearing of the prior convictions at all. Id. The trial court did not accept this “stipulation,” saying any admission would have to specify having been twice before convicted of violating no-contact orders. Id. This Court upheld the trial court, ruling that, unlike the defendants in Old Chief and Johnson, Ortega sought, not to admit proof of the statutory element, but to eliminate the statutory language altogether. Id. at 624-25.

Neither Johnson nor Old Chief requires acceptance of a stipulation that would avoid the statutory language on the ground that the statutory language itself was unfairly prejudicial.

Id. at 625.

Nor do Old Chief and its progeny entitle the defendant to a bifurcated trial, where a jury would decide the facts of the current charge and the judge would rule on the prior conviction element. In Roswell, the defendant was charged with communicating with a minor for immoral purposes, which, like in Gladden, became a felony if the State proved that he had a prior conviction for a felony sexual offense. State v. Roswell, 165 Wn.2d at 192. The defendant argued that his trial should be bifurcated, so that the jury would

decide whether there had been communications with a minor for immoral purposes, but the judge would make a determination on the prior conviction element. Roswell, 165 Wn.2d at 190. The State responded that bifurcation should be denied so that it could prove all elements to the jury. *Id.* at 191. The Supreme Court upheld the trial court's denial of the motion to bifurcate, holding that it was a matter left to the trial court's discretion. Roswell, 165 Wn.2d at 198-99 (distinguishing statutory elements from sentence aggravators).

**5. The Defendant Never Offered An Admission, As Admissible Evidence, That The Prior Convictions Were For Violating No-Contact Orders And That He Was the Defendant In Each. Instead, He Sought to Redefine The Crime, And/Or Bifurcate The Trial. This Is Not A Basis On Which He Can Claim Error.**

This was a prosecution for felony violation of no-contact order – precisely one of the areas where the rule in Old Chief affords less advantage. And the defendant here sought to do the very things which Ortega, Gladden, and Roswell say he cannot do.

He first sought to bifurcate deliberations, so that the jury would separately deliberate first on the underlying violation, and only later on whether two prior convictions were proved. Trial RP 30. Later, he sought to bifurcate the trial by waiving his right to jury as to that one element. Trial RP 42-43. He specified that, by

“stipulation,” he meant that (however structured) he meant that the evidence not be seen by the jury at all. Trial RP 30, 41-42, 43.

The trial court rejected these scenarios, saying there was no authority to bifurcate deliberations or trial, or to waive jury as to only one element. Trial RP 31, 42-44. It added that the fact of two prior convictions being for violating a no contact order was an element of the crime that needed to go to the jury. Trial RP 42. It did not abuse its discretion in so ruling. Gladden, 116 Wn. App. at 565-66 (cannot “stipulate” to removal an element altogether); Ortega, 134 Wn. App. at 624-25 (in prosecution for felony violation of no-contact order, cannot “stipulate” to removal of the statutory element that prior convictions be for violating no-contact orders); Roswell, 165 Wn.2d at 198-99 (whether to bifurcate trial left to discretion of trial judge, distinguishing sentence aggravators from elements of a crime). These cases are dispositive.

Bifurcated trials in any event “are not favored.” State v. Monschke, 133 Wn. App. 313, 335, 135 P.3d 966 (2006) (quoting State v. Kelley, 64 Wn. App. 755, 762, 828 P.2d 1106 (1992)), review denied, 159 Wn.2d 1010 (2007)). Bifurcation is inappropriate if a unitary trial would not significantly prejudice the defendant or if there is a substantial overlap between evidence

relevant to the proposed separate proceedings. Monschke, 133 Wn. App. at 335. These factors are certainly present here.

Nor was the defendant left without any remedy or relief. The documentary evidence of the prior convictions was itself redacted, in one case (Ex. 5 vs. Ex. 5a) heavily so. Trial RP 113-17, 136-39; Compare Exs. 5, 12, and 13 with Exs. 5a, 12a, 13a. And while he could not keep out proof of the statutory element that required naming the priors, had the defendant agreed to admit that the prior convictions were for violating no-contact orders and were *his*, the booking photos would not have been offered by the prosecution. Trial RP 39, 41, 42. And the trial court, in that case, would not have admitted them if they had been offered. Trial RP 43-44. Instead, the defendant refused to admit to the priors. Trial RP 44.

The defendant says the problem could have been addressed by inserting the statutory citation in lieu of the name of the crime. BOA 7-8, 11, citing Roswell, 165 Wn.2d at 198 n.6 (in turn citing amicus brief of Washington Association of Prosecuting Attorneys, suggesting such a procedure). But nothing in Roswell or elsewhere *requires* such an approach, and the trial court can hardly be faulted for not doing so when the defendant never offered it up as an alternative. In fact, he never offered any admission at all. Rather,

all he ever “offered” was a partial jury waiver, his goal always being to keep any mention of prior convictions from the jury altogether. Trial RP 30-31, 40-43.

To the extent that the discussion in Roswell stands for something broader – that, in situations where named prior convictions are statutory elements, trial courts should do all they can to mitigate prejudice without compromising the proof – the trial court here complied, in carefully redacting portions of the documentary evidence. Trial RP 113-17, 136-39; compare Exs. 5, 12, and 13 with Exs. 5a, 12a, and 13a.

The defendant argues that the rule in Old Chief and Johnson establish error here, and compel remand. BOA 9-11. But, contrary to his assertions now, the defendant here *never offered to stipulate – that is, never offered to admit – that the convictions were his, and were for prior violations of no-contact orders.* Trial RP 44. He could have kept the booking photos out, if he had. Trial RP 43-44. He chose not to. Trial RP 44. Instead, all he ever offered was a partial jury waiver. Trial RP 30-31, 40-43. Case law rejects such an “offer.” Gladden, 116 Wn. App. at 565-66; Ortega, 134 Wn. App. at 624-25; Roswell, 165 Wn.2d at 198-99. A defendant who does not

offer a full admission to an element can hardly then claim the benefit of the ER 403 sanitizing rule in Old Chief.

**IV. CONCLUSION**

The judgment and sentence should be *affirmed*.

Respectfully submitted on January 10, 2013.

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## Title 26. Domestic Relations

### Chapter 26.50. Domestic Violence Prevention

#### **RCW 26.50.110. Violation of order--Penalties**

(1)(a) Whenever an order is granted under this chapter, chapter 7.90, 9.94A, 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 any of the following provisions of the order is a gross misdemeanor, except as provided in subsections (4) and (5) of this section:

(i) The restraint provisions prohibiting acts or threats of violence against, or stalking of, a protected party, or restraint provisions prohibiting contact with a protected party;

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

(iii) A provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location;

(iv) A provision prohibiting interfering with the protected party's efforts to remove a pet owned, possessed, leased, kept, or held by the petitioner, respondent, or a minor child residing with either the petitioner or the respondent; or

(v) A provision of a foreign protection order specifically indicating that a violation will be a crime.

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

(2) 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, chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, that restrains the person or excludes the person from a residence, workplace, school, or day care, or prohibits the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, if the person restrained knows of the order. Presence of the order

in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.

(3) A violation of an order issued under this chapter, chapter 7.90, 9.94A, 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.

(4) Any assault that is a violation of an order issued under this chapter, chapter 7.90, 9.94A, 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, and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in violation of such an order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.

(5) A violation of a court order issued under this chapter, chapter 7.90, 9.94A, 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, is a class C felony if the offender has at least two previous convictions for violating the provisions of an order issued under this chapter, chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020. The previous convictions may involve the same victim or other victims specifically protected by the orders the offender violated.

(6) Upon the filing of an affidavit by the petitioner or any peace officer alleging that the respondent has violated an order granted under this chapter, chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, the court may issue an order to the respondent, requiring the respondent to appear and show cause within fourteen days why the respondent should not be found in contempt of court and punished accordingly. The hearing may be held in the court of any county or municipality in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation.

#### CREDIT(S)

[2009 c 439 § 3, eff. July 26, 2009; 2009 c 288 § 3, eff. July 26, 2009; 2007 c 173 § 2, eff. July 22, 2007; 2006 c 138 § 25, eff. June 7, 2006; 2000 c 119 § 24; 1996 c 248 § 16; 1995 c 246 § 14; 1992 c 86 § 5; 1991 c 301 § 6; 1984 c 263 § 12.]