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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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CAROLA WASHBURN and JANET LOH, individually and on behalf of
the Estate of BAERBEL K. ROZNOWSKI,

Plaintiffs/Respondents,

vs.

CITY OF FEDERAL WAY, a Washington municipal corporation,

Defendant/Petitioner.

BRIEF OF AMICUS CURIAE
WASHINGTON STATE ASSOCIATION FOR JUSTICE FOUNDATION

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I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Washington State Association for Justice Foundation (WSAJ Foundation) is a not-for-profit corporation organized under Washington law, and a supporting organization to the Washington State Association for Justice (WSAJ). WSAJ Foundation is the new name of Washington State Trial Lawyers Association Foundation (WSTLA Foundation), a supporting organization to the Washington State Trial Lawyers Association (WSTLA), now renamed WSAJ. WSAJ Foundation, which operates the amicus curiae program formerly operated by WSTLA Foundation, has an interest in the rights of plaintiffs under the civil justice system, including an interest in the law regarding when a governmental entity is subject to tort liability.

II. INTRODUCTION AND STATEMENT OF THE CASE

This case involves the question of whether a law enforcement officer serving an antiharassment protection order issued under Ch. 10.14 RCW owes a duty of care to the person who obtains the order. Carola Washburn and Janet Loh, individually, and on behalf of the estate of their mother, Baerbel K. Roznowski (collectively Washburn) filed suit against the City of Federal Way (City) for the death of their mother after she obtained an antiharassment order against her intimate partner. The facts are drawn from the briefing of the parties and the Court of Appeals opinion.¹

¹ See City Br. at 4-24 & App. B; Washburn Br. at 4-15 & App. A-C; City Reply Br. at 1-2; City Pet. for Rev. at 2-9; Washburn Ans. to Pet. for Rev. at 2-8; City Supp. Br. at 2-8;

For purposes of this amicus brief, the following facts are relevant: Baerbel Roznowski (Roznowski) obtained an emergency ex parte antiharassment order against her intimate partner pursuant to Ch. 10.14 RCW, in an effort to remove him and his belongings from her home. The application for the order stated that Roznowski's partner, Paul Kim (Kim), had engaged in verbal attacks, had frightened her and had come close to hitting her on one occasion, prompting her to call 911. The application further stated that Kim was capable of physical violence, based on a prior incident involving his son. The order restrained Kim from contacting Roznowski or coming within 500 feet of her residence pending a further hearing. See Washburn Br. at App. A (application and order).

In connection with the antiharassment order, Roznowski filled out a Law Enforcement Information Sheet (LEIS). Roznowski checked a box on the LEIS indicating that the "Restrained Person's History Includes ... Assault," in the section of the form labeled "Hazard Information." She indicated that a Korean language interpreter would be required. She also informed law enforcement that Kim was currently living in her home (even though he apparently maintained a separate residence of his own), that he was unaware she had obtained the order, and that he was likely to react violently when served. See Washburn Br. at App. B (LEIS).

Although an applicant may elect to have an antiharassment order served by a private process server, Roznowski requested service by law

Washburn Supp. Br. at 2-8; Washburn v. Federal Way, 169 Wn. App. 588, 593-99, 283 P.3d 567 (2012), *review granted*, 176 Wn.2d 1010 (2013).

enforcement personnel. City police officer Andrew Hensing (Hensing) picked up a folder containing the antiharassment order, Roznowski's application, and the LEIS, and served Kim with a copy of the order at Roznowski's home. Within a matter of hours, Kim murdered Roznowski in the home, stabbing her 18 times.

Washburn subsequently filed this wrongful death and survival action against the City. The City sought summary judgment on grounds that it owes no duty, and that Washburn's claims are barred by the public duty doctrine. The superior court denied summary judgment based upon the failure-to-enforce exception to the public duty doctrine.

The City sought discretionary review of the summary judgment order in the Court of Appeals. Although the court commissioner disagreed with the superior court regarding applicability of the failure-to-enforce exception to the public duty doctrine, he reasoned that the denial of summary judgment was not obvious error based on the legislative intent and special relationship exceptions to the doctrine, and denied discretionary review. See City Br. at App. B (commissioner's ruling). A panel of judges denied a motion to modify the commissioner's ruling.

The case proceeded to trial before a jury. Washburn contended that Hensing failed to exercise reasonable care in serving and enforcing the antiharassment order, apparently supported by expert testimony. See Washburn Br. at 22 n.19. The City countered that the public duty doctrine barred Washburn's claims. The jury was instructed that "[a] city police

department has a duty to exercise ordinary care in the service and enforcement of court orders.” Washburn at 602 (quoting Instruction 12).

After a verdict in Washburn’s favor,² the City appealed. The Court of Appeals upheld the verdict without reaching the merits of the duty issue, holding Instruction 12 is the law of the case and concluding that “there was sufficient evidence for the jury to find that Officer Hensing, as an agent of the City, breached a duty by failing to exercise ordinary care in the *enforcement* of the court order he served on Kim.” Id. at 607 (emphasis in original). The court summarized the evidence at trial:

Around 8:00 a.m. that morning, Officer Hensing arrived near Roznowski's residence and parked his vehicle. He testified at trial that he did not completely read the papers in the folder prior to serving Kim. Thus, he was then unaware of the information about Kim contained in the LEIS and in Roznowski's affidavit supporting her petition for a protection order. It appears that he did not read the information in the LEIS stating that a Korean interpreter would be needed because there was no interpreter with the officer.

Officer Hensing testified at trial that he knocked at the front door of Roznowski's home, and Kim answered. Officer Hensing asked Kim to identify himself. The officer then served the order on Kim. According to the officer, a brief conversation between the two followed.

Officer Hensing testified that he told Kim that he had been served with an anti-harassment order and that there was a hearing date stated in the order. He asked Kim if he could read English and told Kim to read the order, which he testified that Kim then did. Officer Hensing also testified that he asked Kim if he had any questions.

Officer Hensing testified that he “saw someone in the background” during the exchange with Kim at the door of Roznowski's home, but did not know whether the person “was male or female.” He did not inquire further and returned to his parked vehicle. There, he completed the return of service form. The entire interaction with Kim took about

² The jury awarded \$1.1 million to Roznowski’s estate, but nothing to her daughters individually. Washburn successfully moved for a new trial on the issue of the daughters’ damages.

five minutes and was completed by 8:13 a.m. Officer Hensing left the scene without taking any further action.

The evidence at trial showed that Kim remained at Roznowski's residence after Officer Hensing departed. This was notwithstanding the protection order's direction that Kim was restrained from either entering or being within 500 feet of the residence or from contacting Roznowski.

Washburn, 169 Wn.App. at 596-97 (footnotes citing to record omitted).

The City sought further review, which this Court granted, and the questions presented include whether Hensing owed a duty of care to Roznowski to enforce the antiharassment order.

III. ISSUE PRESENTED

Under Washington tort law, does a law enforcement officer serving an antiharassment protection order issued under Ch. 10.14 RCW owe a duty to the person obtaining the order to enforce the order?³

IV. SUMMARY OF ARGUMENT

Following the waiver of sovereign immunity, local government entities such as the City are liable in tort for damages arising out of the wrongful conduct of their employees to the same extent as if they were a private person or corporation. When a duty is imposed upon a governmental actor by statute, the public duty doctrine provides an analytical framework to determine whether the statutory duty can serve as a basis for imposing a tort duty, and to ensure that a governmental actor is not subject to greater liability than private persons or corporations. Application of the public duty doctrine generally involves consideration of

³ See City Pet. for Rev. at 1-2. The City's petition for review also raises procedural questions whether the duty issue is properly preserved for review. See *id.* WSAJ Foundation does not address these questions, and assumes solely for purposes of argument that the Court will reach the duty issue.

four nonexclusive “exceptions” to the doctrine, providing a shorthand means of conducting a conventional tort duty analysis in this context.

One of the traditional exceptions to the public duty doctrine at issue in this review is based upon legislative intent, and provides that a governmental actor owes a duty of care when statutory law clearly identifies and protects a particular and circumscribed class of persons. Chapter 10.14 RCW, which is part of Washington’s multifaceted remedial scheme established to protect citizens from harassment and similar behavior, is such a law. This chapter identifies victims of harassment and provides a means of preventing further harassment in the form of protection orders that may be served by local law enforcement. Such prevention necessarily includes a duty on the part of law enforcement officers to enforce violations of the order occurring at the time of service. Otherwise, the purpose of the chapter is lost. Accordingly, the City owed Roznowski a duty of care in this case.

Although the legislative intent exception to the public duty doctrine is a sufficient basis for imposition of a duty on the City, the failure-to-enforce exception is also invoked as a basis for imposition of a duty. If the Court reaches the failure-to-enforce exception, it should reject the City’s argument that the exception is limited to statutory duties that are mandatory and do not involve any element of discretion. This argument is inconsistent with traditional duty analysis, and erroneously extends discretionary immunity to operational decisions that are subject to a

discernable standard of care. The Court should disapprove of Court of Appeals opinions supporting the City's argument.

V. ARGUMENT

When the Washington Constitution was adopted, the state enjoyed sovereign immunity, and was not liable in tort absent statutory authority permitting the imposition of liability.⁴ Historically, municipalities shared in the state's immunity, but to a lesser extent, as reflected in the problematic distinction between "private" or "proprietary" functions, for which municipalities were liable, and "governmental" functions, for which they were not. See e.g. Hagerman v. City of Seattle, 189 Wash. 694, 698, 66 P.2d 1152 (1937) (recognizing distinction and noting difficulties).

In 1961, the Legislature abolished the state's sovereign immunity from tort liability, making it liable in tort to the same extent as if it were a private person or corporation, regardless of whether a proprietary or governmental function is involved. See Laws of 1967, Ch. 136 § 1 (codified as amended at RCW 4.92.090). The Court interpreted this waiver as abolishing sovereign immunity for municipalities as well. See Kelso v. Tacoma, 63 Wn.2d 913, 916-19, 390 P.2d 2 (1964). The Legislature subsequently codified the waiver of sovereign immunity for local

⁴ See Charles F. Abbott, Jr., Cmt., Abolition of Sovereign Immunity in Washington, 36 Wash. L. Rev. 312, 313-14 (1961); see also Wash. Const. art. II § 26 (stating "[t]he legislature shall direct by law, in what manner, and in what courts, suits may be brought against the state").

government entities as it had for the state. See Laws of 1967, Ch. 164 § 1 (codified as amended at RCW 4.96.010).⁵

Although the state and local government entities are now liable in tort to the same extent as a private person or corporation, they retain narrow common law immunities for judicial, legislative and executive functions, grounded in the notion that “it is not a tort for government to govern.” Evangelical United Brethren Church v. State, 67 Wn.2d 246, 253, 407 P.2d 440 (1964) (involving discretionary executive immunity; internal quotation omitted).⁶ The activities covered by discretionary executive immunity in particular are deemed to be so unique that there is no similar basis on which a private person or corporation could be held liable. See Mason v. Bitton, 85 Wn.2d 321, 327-29, 534 P.2d 1360 (1975). This immunity does not extend to operational decisions that are subject to a discernable standard of care. See id.⁷

Against this backdrop of the abolition of sovereign immunity, and emergence of the limited immunities that apply to government activities for which no private person or corporation could be held liable, the Court has also developed what has come to be known as the public duty

⁵ The full texts of the current versions of RCW 4.92.090 and 4.96.010 are reproduced in the Appendix to this brief.

⁶ See also Lallas v. Skagit County, 167 Wn.2d 861, 864-65, 225 P.3d 910 (2009) (regarding judicial immunity); Mission Springs, Inc. v. City of Spokane, 134 Wn.2d 947, 969-70, 954 P.2d 250 (1998) (regarding legislative immunity); see generally Restatement (Second) of Torts § 895B & cmt. (1965) (discussing sovereign immunity, waiver, and remaining governmental immunities).

⁷ See also Habermann v. WPPSS, 109 Wn.2d 107, 158, 744 P.2d 254 (1987) (distinguishing between arguably immune decision to build nuclear plant and technical means by which decision was implemented, which is subject to ordinary tort principles; collecting other cases involving operational decisions subject to standard of care).

doctrine. This doctrine serves as an analytical framework, or “focusing tool,” for determining whether the statutory duty gives rise to a tort duty, ensuring that government entities are not subject to greater tort liability than private persons and corporations. Munich v. Skagit Emergency Communication Ctr., 175 Wn.2d 871, 878, 288 P.3d 328 (2012) (relying on Osborn v. Mason County, 157 Wn.2d 18, 27, 134 P.3d 197 (2006)).⁸

Application of the public duty doctrine generally involves consideration of its four nonexclusive “exceptions,” representing a shorthand means of undertaking a conventional tort duty analysis regarding whether a government entity owes a duty to the plaintiff. See Osborn, 157 Wn.2d at 27-28. These exceptions are: (1) legislative intent, (2) failure to enforce, (3) the rescue doctrine, and (4) a special relationship. See Munich, 175 Wn.2d at 879.⁹ All exceptions but the rescue doctrine appear to be at issue in this case. See Washburn Supp. Br. at 21-31. The legislative intent exception applies here and should be dispositive of the duty issue.

A. Overview Of Ch. 10.14 RCW, And The Comprehensive Statutory Protections For Victims Of Domestic Violence And Harassment.

In 1987, the Legislature adopted Ch. 10.14 RCW to protect victims of harassment, describing its findings and intent as follows:

⁸ See also Munich, 175 Wn.2d at 886 (Chambers, J., concurring specially, joined by four other justices, concluding public duty doctrine is limited in application to duties imposed by statute, ordinance or regulation).

⁹ Regarding the nonexclusive nature of the exceptions, see Taggart v. State, 118 Wn.2d 195, 218 n.4, 822 P.2d 243 (1992) (stating Petersen v. State, 100 Wn.2d 421, 425-29, 671 P.2d 230 (1983), “effectively created another exception to the doctrine”).

The legislature finds that serious, personal harassment through repeated invasions of a person's privacy by acts and words showing a pattern of harassment designed to coerce, intimidate, or humiliate the victim is increasing. The legislature further finds that the prevention of such harassment is an important governmental objective. This chapter is intended to provide victims with a speedy and inexpensive method of obtaining civil antiharassment protection orders preventing all further unwanted contact between the victim and the perpetrator.

Laws of 1987, Ch. 280 § 1 (codified as RCW 10.14.010). This chapter creates a simple and expeditious court procedure for obtaining an order of protection against unlawful harassment. See RCW 10.14.040. Unlawful harassment is defined in part to mean "a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose." RCW 10.14.020(2). A victim of harassment may obtain a temporary order of protection on an ex parte basis upon a showing of great or irreparable harm. See RCW 10.14.070-.080. The court has broad discretion in granting a petition, including prohibiting contact with the victim, and requiring the harasser to stay away from the victim's residence and workplace, among other things. See RCW 10.14.080(6).

Generally, law enforcement officers of the county or municipality where the victim resides are obligated to serve the order on the respondent personally, unless the victim elects to use a private process server, or service by publication is warranted. See RCW 10.14.100. Regardless of how it is served, notice of the order must be given to a local law enforcement agency for the purpose of entering information into a

statewide computer system used to notify all other law enforcement agencies of the existence of the order. See RCW 10.14.110.

An antiharassment protection order is fully enforceable throughout the state. See RCW 10.14.110(1). Willful disobedience of the order normally constitutes a gross misdemeanor and may also subject the violator to penalties for contempt under Ch. 7.21 RCW. See RCW 10.14.120 & .170; see also RCW 10.14.115 (regarding investigation of a report of an alleged violation of protection order and law enforcement officer's obligation to advise respondent of the existence of the order); RCW 10.14.210 (recognizing authority to arrest *or* cite a respondent for violation of protection order); RCW 10.31.100(8) (permitting warrantless arrest for violation of antiharassment order obtained under Ch. 10.14 RCW, even if violation not committed in presence of peace officer).¹⁰

Chapter 10.14 RCW "is part of a multifaceted remedial scheme the Legislature established to protect citizens from harmful harassing behavior." State v. Smith, 111 Wn.2d 1, 3, 759 P.2d 372 (1988).¹¹ While

¹⁰ The full texts of the current versions of RCW 10.14.010, .020, .040, .055, .100, .110, .115, .130 and .210 and RCW 10.31.100 are reproduced in the Appendix to this brief.

¹¹ Smith upheld as constitutional the criminal antiharassment statute, Ch. 9A.46 RCW, and noted the common purpose underlying the malicious harassment statute, former RCW 9A.36.080, the telephone harassment statute, RCW 9.61.230, and Ch. 10.14 RCW. See 111 Wn.2d at 3; accord Burchell v. Thibault, 74 Wn.App. 517, 520-21, 874 P.2d 196 (1994) (quoting Smith in connection with Ch. 10.14 claim, and noting "Washington has taken a strong interest in protect its citizens against harassment"); see also Laws of 1979, Ch. 105 (adopting Ch. 10.99 RCW, regarding official response to domestic violence); Laws of 1984, Ch. 263 (adopting Ch. 26.50 RCW, the Domestic Violence Prevention Act); Laws of 1986, Ch. 187 § 5 (codified as RCW 74.34.110, regarding vulnerable adult protection orders); Laws of 2006, Ch. 138 (adopting Ch. 7.90 RCW, Sexual Assault Protection Order Act); Laws of 2013, Ch. 84 (regarding protection orders for stalking). The interrelationship of these laws and the overlapping protections they provide are evident from the forms and instructional brochures that the Administrative Office of the Courts has prepared at the direction of the Legislature pursuant to RCW 10.14.050. See

Ch. 10.14 RCW is separate and distinct from the chapters specifically addressing domestic violence, these chapters provide somewhat overlapping protection. The relatively broad definition of “unlawful harassment” under Ch. 10.14 RCW would appear to include the narrower definitions of “domestic violence” under Chs. 10.99 and 26.50 RCW.¹² In other words, the same conduct could qualify as unlawful harassment under Ch. 10.14 RCW and as domestic violence under Chs. 10.99 and 26.50 RCW.

Moreover, RCW 10.14.055 expressly provides that no fees for filing or service of process may be charged to victims seeking relief under Ch. 10.14 RCW “from a person who is a family or household member as defined by RCW 26.50.010(2) who has engaged in conduct that would constitute domestic violence as defined in RCW 26.50.010(1),” suggesting that it may be proper to seek an antiharassment protection order for conduct that would otherwise qualify as domestic violence. The instructions drafted by the Administrative Office of the Courts likewise seem to confirm that a victim of domestic violence can apply for an

e.g. “Instructions On How To Fill Out The Forms For Antiharassment,” “What type of protection order should you file?” and “Guidelines for Domestic Violence Protection and Antiharassment Orders.” These documents are reproduced in the Appendix, and are also available at www.courts.wa.gov.

¹² Compare RCW 10.14.020(2) (defining “unlawful harassment”) with RCW 10.99.020(5) and RCW 26.50.010(1) (defining “domestic violence”). In addition to RCW 10.14.020, the full texts of the current versions of RCW 10.99.020 and 26.50.010 are reproduced in the Appendix to this brief.

antiharassment order. See “Instructions On How To Fill Out The Forms For Antiharassment,” at 3-4 (in the Appendix).¹³

Furthermore, violations of an antiharassment protection order obtained under Ch. 10.14 RCW may implicate other domestic violence protections. In addition to criminal penalties and contempt, violation of an antiharassment order may also constitute an independent act of domestic violence. For example, as pointed out by Washburn and recognized by the City, see City Br. at 28-29, violating an order by remaining in the victim’s residence constitutes criminal trespass, see RCW 9A.52.070-.080, which, in turn, constitutes domestic violence when the victim and harasser are members of the same family or household, see RCW 10.99.020(5)(j)-(k). This is not necessarily the only example, as continued contact with the victim in violation of an antiharassment order may induce fear of assault, satisfying the definitions of domestic violence under both Chs. 10.99 and 26.50 RCW.¹⁴

¹³ Under the facts of this case, although the petition is not entirely clear, it is possible that Roznowski might have qualified for a domestic violence protection order under Ch. 26.50 RCW. See Washburn Br. at App. A; see also RCW 26.50.010(1) (providing “infliction of fear of imminent ... assault, between family or household members” qualifies as domestic violence); RCW 26.50.010(2) (defining “family or household members” to include “adult persons who are presently residing together or who have resided together in the past and who have or have had a dating relationship”).

The City points to RCW 10.14.130, which provides that antiharassment protection orders shall not be issued for any action specifically covered by certain other chapters addressing domestic violence. See City Reply Br. at 18 (citing statute as RCW 10.14.103). However, in light of RCW 10.14.055, this statute merely seems to preclude the issuance of an antiharassment protection order in an action commenced under one of the referenced domestic violence chapters.

¹⁴ See RCW 10.99.020(5) (nonexclusive list of crimes between family or household members constituting domestic violence); RCW 26.50.010(1)(a) (defining domestic violence).

In light of the foregoing, the antiharassment statute, Ch. 10.14 RCW, should not be viewed in isolation from the constellation of domestic violence statutes enacted by the Legislature, as the City seems to suggest. See City Br. at 31-33; City Reply Br. at 19-20. Instead, Ch. 10.14 RCW is part of a comprehensive legislative scheme to prevent domestic violence and harassment, and the City's invocation of the public duty doctrine to avoid civil liability must be viewed in this larger context.

B. Ch. 10.14 RCW Satisfies The Legislative Intent Exception To The Public Duty Doctrine And Supports Imposition Of A Tort Duty On Officers While Serving A Protection Order.

A duty of care exists based upon the legislative intent exception to the public duty doctrine when a statute evidences a clear legislative intent to identify and protect a particular and circumscribed class of persons. See Ravenscroft v. Washington Water Power Co., 136 Wn.2d 911, 929-30, 969 P.2d 75 (1998); Halvorson v. Dahl, 89 Wn.2d 673, 676-77, 574 P.2d 1190 (1978). The enacted statement of findings and intent underlying Ch. 10.14 RCW clearly identifies the particular and circumscribed class of persons the Legislature intends to protect, namely victims of unlawful harassment. See RCW 10.14.010. The definition of "unlawful harassment" confirms the particular and circumscribed nature of the victim class, defining the phrase in terms of "conduct directed at *a specific person*" that is "detrimental to *such person*." RCW 10.14.020(2) (emphasis added).

The antiharassment chapter protects members of this victim class by obligating law enforcement officers to prevent harassment by serving and enforcing antiharassment orders. See RCW 10.14.100-.110. In

particular, the statement in RCW 10.14.100(1) that “[t]he order is fully enforceable” entails a duty to enforce the order when it is served. If Ch. 10.14 RCW were interpreted otherwise, then the legislative intent to promote the “important governmental objective” of preventing unlawful harassment would be lost. See RCW 10.14.010.¹⁵

The legislative intent to identify and protect victims of harassment is bolstered by the relationship between the antiharassment statute and the domestic violence statutes. See supra § A. The Court of Appeals has held that Ch. 10.99 RCW satisfies the legislative intent exception to the public duty doctrine. See Donaldson, 65 Wn. App. at 667-68. Like the antiharassment statute, the domestic violence statute identifies the particular class of individuals to be protected, i.e., victims of domestic violence, and imposes somewhat analogous albeit more specific duties on law enforcement “to better enforce the current laws in order to protect [such victims].” Id., 65 Wn.App. at 667 (brackets added).¹⁶ This reasoning from Donaldson should be applied to the antiharassment statute.¹⁷

¹⁵ A law enforcement officer may, but is not required to, arrest the respondent in order to enforce the order. See RCW 10.14.210; RCW 10.31.100(8). What steps should be taken will depend upon the applicable standard of care, and may include citing the respondent for noncompliance, remaining at the premises until the respondent voluntarily leaves, or escorting the respondent from the premises.

The City emphasizes the fact that Kim left Roznowski’s home after service of the antiharassment order and then returned, apparently with her acquiescence. See City Pet. for Rev. at 4-5; City Supp. Br. at 3-4. The implicit argument seems to be at odds with the jury’s finding of proximate cause. In any event, enforcing the antiharassment order in some fashion at the time of service may have deterred Kim from returning to Roznowski’s home. Cf. Donaldson v. City of Seattle, 65 Wn. App. 661, 677, 831 P.2d 1098 (1992), *review dismissed*, 120 Wn.2d 1031 (1993) (Coleman, J., dissenting, stating that “an arrest emphasizes to the arrestee the gravity of the situation and may, in and of itself, serve a deterrent function” in the domestic violence context).

¹⁶ See also RCW 10.99.010 (enacted statement of legislative findings and intent); RCW 10.99.030 (regarding duties of law enforcement officers); Roy v. City of Everett,

Although the City acknowledges the formulation of the legislative intent exception from Ravenscroft, supra, it tries to recast the exception as limited to statutes that impose a mandatory duty to guarantee safety, citing Donohoe v. State, 135 Wn.App. 824, 142 P.3d 654 (2005). See City Br. at 31-32. The City's reading of Donohoe, involving regulation of nursing homes under Ch. 18.51 RCW, is unsupported by the text of the decision and should be rejected. The court found the legislative intent exception inapplicable because there was no evidence of intent to benefit the plaintiff individually rather than the public as a whole.¹⁸ Moreover, even though the ultimate purpose of regulating nursing homes is ultimately to promote safe and adequate treatment of the individuals residing therein, the statute does not describe any duties running directly from the state or local government entities to the residents of nursing homes. Instead, the statute allows the state to hold a nursing home accountable for failure to provide safe and adequate treatment.¹⁹

118 Wn.2d 352, 357-59, 823 P.2d 1084 (1992) (rejecting immunity for law enforcement officers for violation of Ch. 10.99 RCW because it “would undercut the purpose of [the chapter]”). The full texts of the current versions of RCW 10.99.010 and .030 are reproduced in the Appendix to this brief.

¹⁷ In addressing the scope of the duty owed, Donaldson held that the mandatory duty to arrest a person committing an act of domestic violence did not also include a duty to conduct a follow-up investigation, see 65 Wn. App. at 671-75, although it is not clear whether this holding is limited to the specific facts, see id. at 676 (Coleman, J., dissenting).

¹⁸ See Donohoe, 135 Wn.App. at 848 (quoting, and noting agreement with, trial court's reasoning that “[T]he plaintiff fails to convince [us] that the legislature intended the nursing home regulatory scheme to be for the benefit of the plaintiff individually rather than the public as a whole”; brackets in original).

¹⁹ See Donohoe at 849 (indicating “the mandatory nature of these sanctions does not require DSHS to take specific action on behalf of any current individual resident”); see also RCW 18.51.005 & .007 (statements of legislative purpose and intent). Donohoe at 847 n.16 & 849 is also troubling in that it seems to apply the mandatory/discretionary distinction, addressed infra § C, that has developed in Court of Appeals cases regarding the failure-to-enforce exception.

Here, in contrast to Donohoe and Ch. 18.51 RCW, there is evidence of legislative intent to protect specific victims of harassment, as distinguished from members of the public as a whole. See RCW 10.14.010. The chapter provides a means of preventing further harassment in the form of protection orders that may be served by local law enforcement, and, as noted above, such prevention necessarily includes a duty on the part of law enforcement officers to enforce violations of the order occurring at the time of service. As a result, the legislative intent exception to the public duty doctrine is satisfied by Ch. 10.14 RCW.

More specifically, the City argues that the legislative intent exception is not applicable because Hensing fulfilled his obligations under Ch. 10.14 RCW simply by serving Kim in the manner that he did. See City Reply Br. at 20. This analysis is contrary to the traditional formulation of the legislative intent exception to the public duty doctrine, is unsupported by authority, and seems to conflate the legislative intent exception to the public duty doctrine with the failure-to-enforce exception. See infra § C. In addition, the City seems to be confusing the question of whether a duty exists with the separate question of whether the duty has been breached. The City appears to assume that the bare fact of leaving a copy of the antiharassment order with Kim satisfies Hensing's duty of care in serving and enforcing the order, when the briefing before the Court

reflects that there was evidence of a discernable standard of care that Hensing violated when he served the order. See Washburn Br. at 22 n.19.

C. The Failure-To-Enforce Exception To The Public Duty Doctrine Should Not Be Limited To Statutory Duties Using Mandatory Language; Rather, The Key Inquiry Is Whether The Statutory Duty Involves Operational Conduct Subject To A Discernable Standard Of Care.

Although the legislative intent exception to the public duty doctrine alone is a sufficient basis to affirm the existence of a duty in this case, the parties have also addressed the applicability of the failure-to-enforce exception to the doctrine. See City Br. at 27-31; Washburn Br. at 27-32; City Reply Br. at 18-19.²⁰ The failure to enforce exception applies:

where governmental agents responsible for enforcing statutory requirements possess actual knowledge of a statutory violation, fail to take corrective action despite a statutory duty to do so, and the plaintiff is within the class the statute intended to protect[.]

Bailey v. Town of Forks, 108 Wn.2d 262, 268, 737 P.2d 1257 (1987) (brackets added; citing Campbell v. Bellevue, 85 Wn.2d 1, 12-13, 530 P.2d 234 (1975); Mason, 85 Wn.2d at 326-27). The City argues that the exception must rest upon the existence of a *mandatory* statutory duty to perform a particular act, and that, because there is no mandatory statutory duty to *arrest* a respondent who is violating an antiharassment order, the exception does not apply. See City Br. at 27-28 & n.12.²¹ Under this

²⁰ The parties also address the special relationship exception and, separately, whether the public duty doctrine is even applicable in this context. See Washburn Supp. Br. at 22-27. These issues are not discussed in this brief.

²¹ The City's argument is traceable to the Court of Appeals decision in McKasson v. State, 55 Wn. App. 18, 24-25, 776 P.2d 971, *review denied*, 113 Wn.2d 1026 (1989), which inferred the requirement of a mandatory statutory duty from this Court's prior cases, elevating an incidental fact in Bailey (i.e., the mandatory nature of the statutory duty) to an element of the failure-to-enforce exception, and misreading Campbell as

argument, Hensing fulfilled his only mandatory duty by serving the protection order and providing proof of service.

If the Court reaches this issue, it should reject the City's argument because it is incompatible with this Court's jurisprudence regarding the public duty doctrine and the limited discretionary immunity that remains following the waiver of sovereign immunity. None of this Court's decisions regarding the failure-to-enforce exception to the public duty doctrine *require* a mandatory statutory duty, although some of them clearly involve such a mandatory duty.²² Yet, the Court has affirmed the imposition of a tort duty when the governmental actor in question has discretion whether or how to fulfill a statutory duty.²³ Thus, while a

involving a mandatory duty rather than a discretionary one. See City Br. at 27-28 & n.9 (citing McKasson).

This issue was last before the Court in 1996 in Albert v. State, Wn. S. Ct. #63166-2, but the case was resolved without opinion. The Court should take this opportunity to disapprove of McKasson and its progeny on this point of law. See Forest v. State, 62 Wn. App. 363, 369-70, 814 P.2d 1181 (1991) (relying on McKasson); Smith v. City of Kelso, 112 Wn. App. 277, 282, 48 P.3d 372 (2002) (relying on Forest), *review denied*, 148 Wn.2d 1012 (2003); Halleran v. Nu West, Inc., 123 Wn. App. 701, 714, 98 P.3d 52 (2004) (relying on McKasson and Smith), *review denied*, 154 Wn.2d 1005 (2005); Donohoe, 135 Wn. App. at 847 n.16 & 849 (relying on McKasson and Halleran); U.S. Oil Trading, LLC v. State, 159 Wn. App. 357, 365, 249 P.3d 630 (relying on Halleran), *review denied*, 171 Wn.2d 1025 (2011); Fishburn v. Pierce County Planning & Land Servs. Dep't, 161 Wn. App. 452, 468-70, 250 P.3d 146 (relying on Forest, Donohoe and Smith), *review denied*, 172 Wn.2d 1012 (2011). But see Zimbelman v. Chaussee Corp., 55 Wn.App. 278, 282 n.10, 777 P.2d 32 (1989) (rejecting argument that lack of statutory mandate negates duty in dicta), *review denied*, 114 Wn.2d 1007 (1990).

The City also cites Yergeson v. Kitsap County, 145 Wn. App. 526, 186 P.3d 1140 (2008), for the proposition that the antiharassment order does not give rise to Hensing's duty. See City Br. at 30-31. Whether or not this is true, the duty here does not arise from the order, but rather from Ch. 10.14 RCW.

²² See e.g. Bailey, 108 Wn.2d at 269 & n.1 (involving mandatory duty to take intoxicated person into protective custody).

²³ See e.g. Campbell, 85 Wn.2d at 5-6 (involving statutory obligation to sever unlawful electrical connections, but only if inspector first determines that it is essential for safety); Mason, 85 Wn.2d at 323-24 (involving statutory authority to engage in vehicle pursuit "with due regard for the safety of all persons"); see also Honcoop v. State, 111 Wn.2d 182, 190, 759 P.2d 1188 (1988) (indicating a duty to enjoin violations of the law exists when governing statute provides that violations "may" be enjoined; dicta).

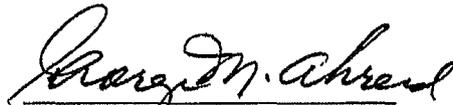
mandatory statutory duty is sufficient to satisfy the failure-to-enforce exception, it is not necessary.

Moreover, requiring a mandatory statutory duty to invoke the failure-to-enforce exception would unduly expand the limited discretionary immunity recognized by this Court following the waiver of sovereign immunity. This discretionary immunity is “strictly limited to those acts involving *basic policy discretion*.” Mason at 327 (emphasis in original); accord Honcoop, 111 Wn.2d at 187 n.1. This immunity does not extend to acts involving “*operational or ‘ministerial functions,’*” which are subject to a discernable standard of care. Id. (emphasis in original); accord Campbell at 12. Restricting the failure-to-enforce exception to those statutes imposing a mandatory duty would in effect confer discretionary immunity on operational decisions, regardless of whether the governmental actor’s conduct under the statute is subject to a standard of care. The City’s argument should be rejected and Court of Appeals decisions supporting this view should be disapproved. See supra n.21.

VI. CONCLUSION

The Court should adopt the arguments advanced in this brief and resolve this appeal accordingly.

DATED this 28th day of May, 2013.


GEORGE M. AHREND


BRYAN P. MARNETIAUX, WITH AUTHORITY

On Behalf of WSAJ Foundation

Appendix

RCW 4.92.090. Tortious conduct of state--Liability for damages

The state of Washington, whether acting in its governmental or proprietary capacity, shall be liable for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation.

[1963 c 159 § 2; 1961 c 136 § 1.]

RCW 4.96.010. Tortious conduct of local governmental entities--Liability for damages

(1) All local governmental entities, whether acting in a governmental or proprietary capacity, shall be liable for damages arising out of their tortious conduct, or the tortious conduct of their past or present officers, employees, or volunteers while performing or in good faith purporting to perform their official duties, to the same extent as if they were a private person or corporation. Filing a claim for damages within the time allowed by law shall be a condition precedent to the commencement of any action claiming damages. The laws specifying the content for such claims shall be liberally construed so that substantial compliance therewith will be deemed satisfactory.

(2) Unless the context clearly requires otherwise, for the purposes of this chapter, "local governmental entity" means a county, city, town, special district, municipal corporation as defined in RCW 39.50.010, quasi-municipal corporation, any joint municipal utility services authority, any entity created by public agencies under RCW 39.34.030, or public hospital.

(3) For the purposes of this chapter, "volunteer" is defined according to RCW 51.12.035.

[2011 c 258 § 10, eff. July 22, 2011; 2001 c 119 § 1; 1993 c 449 § 2; 1967 c 164 § 1.]

RCW 10.14.010. Legislative finding, intent

The legislature finds that serious, personal harassment through repeated invasions of a person's privacy by acts and words showing a pattern of harassment designed to coerce, intimidate, or humiliate the victim is increasing. The legislature further finds that the prevention of such harassment is an important governmental objective. This chapter is intended to provide victims with a speedy and inexpensive method of

obtaining civil antiharassment protection orders preventing all further unwanted contact between the victim and the perpetrator.

[1987 c 280 § 1.]

RCW 10.14.020. Definitions

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. "Course of conduct" includes, in addition to any other form of communication, contact, or conduct, the sending of an electronic communication, but does not include constitutionally protected free speech. Constitutionally protected activity is not included within the meaning of "course of conduct."

(2) "Unlawful harassment" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner, or, when the course of conduct would cause a reasonable parent to fear for the well-being of their child.

[2011 c 307 § 2, eff. July 22, 2011; 2001 c 260 § 2; 1999 c 27 § 4; 1995 c 127 § 1; 1987 c 280 § 2.]

RCW 10.14.040. Protection order--Petition

There shall exist an action known as a petition for an order for protection in cases of unlawful harassment.

(1) A petition for relief shall allege the existence of harassment and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

(2) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.

(3) All court clerks' offices shall make available simplified forms and instructional brochures. Any assistance or information provided by clerks

under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.

(4) Filing fees are set in RCW 36.18.020, but no filing fee may be charged for a petition filed in an existing action or under an existing cause number brought under this chapter in the jurisdiction where the relief is sought or as provided in RCW 10.14.055. Forms and instructional brochures shall be provided free of charge.

(5) A person is not required to post a bond to obtain relief in any proceeding under this section.

(6) The parent or guardian of a child under age eighteen may petition for an order of protection to restrain a person age eighteen years or over from contact with that child upon a showing that contact with the person to be enjoined is detrimental to the welfare of the child.

(7) The parent or guardian of a child under the age of eighteen may petition in superior court for an order of protection to restrain a person under the age of eighteen years from contact with that child only in cases where the person to be restrained has been adjudicated of an offense against the child protected by the order, or is under investigation or has been investigated for such an offense. In issuing a protection order under this subsection, the court shall consider, among the other facts of the case, the severity of the alleged offense, any continuing physical danger or emotional distress to the alleged victim, and the expense, difficulty, and educational disruption that would be caused by a transfer of the alleged offender to another school. The court may order that the person restrained in the order not attend the public or approved private elementary, middle, or high school attended by the person under the age of eighteen years protected by the order. In the event that the court orders a transfer of the restrained person to another school, the parents or legal guardians of the person restrained in the order are responsible for transportation and other costs associated with the change of school by the person restrained in the order. The court shall send notice of the restriction on attending the same school as the person protected by the order to the public or approved private school the person restrained by the order will attend and to the school the person protected by the order attends.

[2002 c 117 § 1; 2001 c 260 § 3. Prior: 1995 c 292 § 2; 1995 c 127 § 2; 1987 c 280 § 4.]

RCW 10.14.055. Fees excused, when

No fees for filing or service of process may be charged by a public agency to petitioners seeking relief under this chapter from a person who has

stalked them as that term is defined in RCW 9A.46.110, or from a person who has engaged in conduct that would constitute a sex offense as defined in *RCW 9A.44.130, or from a person who is a family or household member as defined in RCW 26.50.010(2) who has engaged in conduct that would constitute domestic violence as defined in RCW 26.50.010(1).

[2002 c 117 § 2.]

RCW 10.14.100. Service of order

(1) An order issued under this chapter shall be personally served upon the respondent, except as provided in subsections (5) and (7) of this section.

(2) The sheriff of the county or the peace officers of the municipality in which the respondent resides shall serve the respondent personally unless the petitioner elects to have the respondent served by a private party.

(3) If the sheriff or municipal peace officer cannot complete service upon the respondent within ten days, the sheriff or municipal peace officer shall notify the petitioner.

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

(5) If an order entered by the court recites that the respondent appeared in person before the court, the necessity for further service is waived and proof of service of that order is not necessary. The court's order, entered after a hearing, need not be served on a respondent who fails to appear before the court, if material terms of the order have not changed from those contained in the temporary order, and it is shown to the court's satisfaction that the respondent has previously been personally served with the temporary order.

(6) Except in cases where the petitioner has fees waived under RCW 10.14.055 or is granted leave to proceed in forma pauperis, municipal police departments serving documents as required under this chapter may collect the same fees for service and mileage authorized by RCW 36.18.040 to be collected by sheriffs.

(7) If the court previously entered an order allowing service by publication of the notice of hearing and temporary order of protection pursuant to RCW 10.14.085, the court may permit service by publication of the order of protection issued under RCW 10.14.080. Service by publication must comply with the requirements of RCW 10.14.085.

[2002 c 117 § 3; 2001 c 311 § 2; 1992 c 143 § 15; 1987 c 280 § 10.]

RCW 10.14.110. Notice to law enforcement agencies--Enforceability

(1) A copy of an antiharassment protection order granted under this chapter shall be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order.

Upon receipt of the order, the law enforcement agency shall forthwith enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The law enforcement agency shall expunge expired orders from the computer system. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state.

(2) The information entered into the computer-based system shall include notice to law enforcement whether the order was personally served or served by publication.

[1992 c 143 § 16; 1987 c 280 § 11.]

RCW 10.14.115. Enforcement of order--Knowledge prerequisite to penalties--Reasonable efforts to serve copy of order

(1) When the court issues an order of protection pursuant to RCW 10.14.080, the court shall advise the petitioner that the respondent may not be subjected to the penalties set forth in RCW 10.14.120 and 10.14.170 for a violation of the order unless the respondent knows of the order.

(2) When a peace officer investigates a report of an alleged violation of an order for protection issued under this chapter the officer shall attempt to determine whether the respondent knew of the existence of the protection order. If the officer determines that the respondent did not or probably did not know about the protection order, the officer shall make reasonable efforts to obtain a copy of the protection order and serve it on the respondent during the investigation.

[1992 c 143 § 17.]

RCW 10.14.130. Exclusion of certain actions

Protection orders authorized under this chapter shall not be issued for any action specifically covered by chapter 7.90, 10.99, or 26.50 RCW.

[2006 c 138 § 22, eff. June 7, 2006; 1987 c 280 § 13.]

RCW 10.14.210. Court appearance after violation

(1) A defendant arrested for violating any civil antiharassment protection order issued pursuant to this chapter is required to appear in person before a magistrate within one judicial day after the arrest. At the time of the appearance, the court shall determine the necessity of imposing a no-contact order or other conditions of pretrial release in accordance with RCW 9A.46.050.

(2) A defendant who is charged by citation, complaint, or information with violating any civil antiharassment protection order issued pursuant to this chapter and not arrested shall appear in court for arraignment in accordance with RCW 9A.46.050.

(3) Appearances required pursuant to this section are mandatory and cannot be waived.

[2012 c 223 § 4, eff. June 7, 2012.]

RCW 10.31.100. Arrest without warrant

A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer, except as provided in subsections (1) through (10) of this section.

(1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor, involving physical harm or threats of harm to any person or property or the unlawful taking of property or involving the use or possession of cannabis, or involving the acquisition, possession, or consumption of alcohol by a person under the age of twenty-one years under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070 or 9A.52.080, shall have the authority to arrest the person.

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

(a) An order has been issued of which the person has knowledge under RCW 26.44.063, or chapter 7.90, 10.99, 26.09, 26.10, 26.26, 26.50, or 74.34 RCW restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence, or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location or, in the case of an order issued under RCW 26.44.063, imposing any other restrictions or conditions upon the person; or

(b) A foreign protection order, as defined in RCW 26.52.010, has been issued of which the person under restraint has knowledge and the person under restraint has violated a provision of the foreign protection order prohibiting the person under restraint from contacting or communicating with another person, or excluding the person under restraint from a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime; or

(c) The person is sixteen years or older and within the preceding four hours has assaulted a family or household member as defined in RCW 10.99.020 and the officer believes: (i) A felonious assault has occurred; (ii) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or (iii) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death. Bodily injury means physical pain, illness, or an impairment of physical condition. When the officer has probable cause to believe that family or household members have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider: (i) The intent to protect victims of domestic violence under RCW 10.99.010; (ii) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (iii) the history of domestic violence of each person involved, including whether the conduct was part of an ongoing pattern of abuse.

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

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

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

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

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

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

(f) RCW 46.61.5249, relating to operating a motor vehicle in a negligent manner.

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

(5) Any police officer having probable cause to believe that a person has committed or is committing a violation of RCW 79A.60.040 shall have the authority to arrest the person.

(6) An officer may act upon the request of a law enforcement officer in whose presence a traffic infraction was committed, to stop, detain, arrest, or issue a notice of traffic infraction to the driver who is believed to have committed the infraction. The request by the witnessing officer shall give an officer the authority to take appropriate action under the laws of the state of Washington.

(7) Any police officer having probable cause to believe that a person has committed or is committing any act of indecent exposure, as defined in RCW 9A.88.010, may arrest the person.

(8) A police officer may arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that an order has been issued of which the person has knowledge under chapter 10.14 RCW and the person has violated the terms of that order.

(9) Any police officer having probable cause to believe that a person has, within twenty-four hours of the alleged violation, committed a violation of RCW 9A.50.020 may arrest such person.

(10) A police officer having probable cause to believe that a person illegally possesses or illegally has possessed a firearm or other dangerous weapon on private or public elementary or secondary school premises shall have the authority to arrest the person.

For purposes of this subsection, the term "firearm" has the meaning defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

(11) Except as specifically provided in subsections (2), (3), (4), and (6) of this section, nothing in this section extends or otherwise affects the powers of arrest prescribed in Title 46 RCW.

(12) No police officer may be held criminally or civilly liable for making an arrest pursuant to subsection (2) or (8) of this section if the police officer acts in good faith and without malice.

[2010 c 274 § 201, eff. June 10, 2010; 2006 c 138 § 23, eff. June 7, 2006; 2000 c 119 § 4; 1999 c 184 § 14; 1997 c 66 § 10; 1996 c 248 § 4. Prior: 1995 c 246 § 20; 1995 c 184 § 1; 1995 c 93 § 1; prior: 1993 c 209 § 1; 1993 c 128 § 5; 1988 c 190 § 1; prior: 1987 c 280 § 20; 1987 c 277 § 2; 1987 c 154 § 1; 1987 c 66 § 1; prior: 1985 c 303 § 9; 1985 c 267 § 3; 1984 c 263 § 19; 1981 c 106 § 1; 1980 c 148 § 8; 1979 ex.s. c 28 § 1; 1969 ex.s. c 198 § 1.]

RCW 10.99.010. Purpose--Intent

The purpose of this chapter is to recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide. The legislature finds that the existing criminal statutes are adequate to provide protection for victims of domestic violence. However, previous societal attitudes have been reflected in policies and practices of law enforcement agencies and prosecutors which have resulted in differing treatment of crimes occurring between cohabitants and of the same crimes occurring between strangers. Only recently has public perception of the serious consequences of domestic violence to society and to the victims led to the recognition of the necessity for early intervention by law enforcement agencies. It is the intent of the legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior is not excused or tolerated. Furthermore, it is the intent of the legislature that criminal laws

be enforced without regard to whether the persons involved are or were married, cohabiting, or involved in a relationship.

[1979 ex.s. c 105 § 1.]

RCW 10.99.020. Definitions

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" means a general authority Washington law enforcement agency as defined in RCW 10.93.020.

(2) "Association" means the Washington association of sheriffs and police chiefs.

(3) "Family or household members" means spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(4) "Dating relationship" has the same meaning as in RCW 26.50.010.

(5) "Domestic violence" includes but is not limited to any of the following crimes when committed by one family or household member against another:

(a) Assault in the first degree (RCW 9A.36.011);

(b) Assault in the second degree (RCW 9A.36.021);

(c) Assault in the third degree (RCW 9A.36.031);

(d) Assault in the fourth degree (RCW 9A.36.041);

(e) Drive-by shooting (RCW 9A.36.045);

(f) Reckless endangerment (RCW 9A.36.050);

(g) Coercion (RCW 9A.36.070);

- (h) Burglary in the first degree (RCW 9A.52.020);
 - (i) Burglary in the second degree (RCW 9A.52.030);
 - (j) Criminal trespass in the first degree (RCW 9A.52.070);
 - (k) Criminal trespass in the second degree (RCW 9A.52.080);
 - (l) Malicious mischief in the first degree (RCW 9A.48.070);
 - (m) Malicious mischief in the second degree (RCW 9A.48.080);
 - (n) Malicious mischief in the third degree (RCW 9A.48.090);
 - (o) Kidnapping in the first degree (RCW 9A.40.020);
 - (p) Kidnapping in the second degree (RCW 9A.40.030);
 - (q) Unlawful imprisonment (RCW 9A.40.040);
 - (r) Violation of the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.44.063, 26.44.150, 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145);
 - (s) Rape in the first degree (RCW 9A.44.040);
 - (t) Rape in the second degree (RCW 9A.44.050);
 - (u) Residential burglary (RCW 9A.52.025);
 - (v) Stalking (RCW 9A.46.110); and
 - (w) Interference with the reporting of domestic violence (RCW 9A.36.150).
- (6) "Employee" means any person currently employed with an agency.
- (7) "Sworn employee" means a general authority Washington peace officer as defined in RCW 10.93.020, any person appointed under RCW 35.21.333, and any person appointed or elected to carry out the duties of the sheriff under chapter 36.28 RCW.
- (8) "Victim" means a family or household member who has been subjected to domestic violence.

[2004 c 18 § 2, eff. June 10, 2004; 2000 c 119 § 5; 1997 c 338 § 53; 1996 c 248 § 5; 1995 c 246 § 21; 1994 c 121 § 4; 1991 c 301 § 3; 1986 c 257 § 8; 1984 c 263 § 20; 1979 ex.s. c 105 § 2.]

**RCW 10.99.030. Law enforcement officers--Training, powers, duties--
Domestic violence reports**

(1) All training relating to the handling of domestic violence complaints by law enforcement officers shall stress enforcement of criminal laws in domestic situations, availability of community resources, and protection of the victim. Law enforcement agencies and community organizations with expertise in the issue of domestic violence shall cooperate in all aspects of such training.

(2) The criminal justice training commission shall implement by January 1, 1997, a course of instruction for the training of law enforcement officers in Washington in the handling of domestic violence complaints. The basic law enforcement curriculum of the criminal justice training commission shall include at least twenty hours of basic training instruction on the law enforcement response to domestic violence. The course of instruction, the learning and performance objectives, and the standards for the training shall be developed by the commission and focus on enforcing the criminal laws, safety of the victim, and holding the perpetrator accountable for the violence. The curriculum shall include training on the extent and prevalence of domestic violence, the importance of criminal justice intervention, techniques for responding to incidents that minimize the likelihood of officer injury and that promote victim safety, investigation and interviewing skills, evidence gathering and report writing, assistance to and services for victims and children, verification and enforcement of court orders, liability, and any additional provisions that are necessary to carry out the intention of this subsection.

(3) The criminal justice training commission shall develop and update annually an in-service training program to familiarize law enforcement officers with the domestic violence laws. The program shall include techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of all parties. The commission shall make the training program available to all law enforcement agencies in the state.

(4) Development of the training in subsections (2) and (3) of this section shall be conducted in conjunction with agencies having a primary responsibility for serving victims of domestic violence with emergency shelter and other services, and representatives to the statewide

organization providing training and education to these organizations and to the general public.

(5) The primary duty of peace officers, when responding to a domestic violence situation, is to enforce the laws allegedly violated and to protect the complaining party.

(6)(a) When a peace officer responds to a domestic violence call and has probable cause to believe that a crime has been committed, the peace officer shall exercise arrest powers with reference to the criteria in RCW 10.31.100. The officer shall notify the victim of the victim's right to initiate a criminal proceeding in all cases where the officer has not exercised arrest powers or decided to initiate criminal proceedings by citation or otherwise. The parties in such cases shall also be advised of the importance of preserving evidence.

(b) A peace officer responding to a domestic violence call shall take a complete offense report including the officer's disposition of the case.

(7) When a peace officer responds to a domestic violence call, the officer shall advise victims of all reasonable means to prevent further abuse, including advising each person of the availability of a shelter or other services in the community, and giving each person immediate notice of the legal rights and remedies available. The notice shall include handing each person a copy of the following statement:

“IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the city or county prosecuting attorney to file a criminal complaint. You also have the right to file a petition in superior, district, or municipal court requesting an order for protection from domestic abuse which could include any of the following: (a) An order restraining your abuser from further acts of abuse; (b) an order directing your abuser to leave your household; (c) an order preventing your abuser from entering your residence, school, business, or place of employment; (d) an order awarding you or the other parent custody of or visitation with your minor child or children; and (e) an order restraining your abuser from molesting or interfering with minor children in your custody. The forms you need to obtain a protection order are available in any municipal, district, or superior court.

Information about shelters and alternatives to domestic violence is available from a statewide twenty-four-hour toll-free hot line at (include appropriate phone number). The battered women's shelter and other resources in your area are (include local information)“

(8) The peace officer may offer, arrange, or facilitate transportation for the victim to a hospital for treatment of injuries or to a place of safety or shelter.

(9) The law enforcement agency shall forward the offense report to the appropriate prosecutor within ten days of making such report if there is probable cause to believe that an offense has been committed, unless the case is under active investigation.

(10) Each law enforcement agency shall make as soon as practicable a written record and shall maintain records of all incidents of domestic violence reported to it.

(11) Records kept pursuant to subsections (6) and (10) of this section shall be made identifiable by means of a departmental code for domestic violence.

(12) Commencing January 1, 1994, records of incidents of domestic violence shall be submitted, in accordance with procedures described in this subsection, to the Washington association of sheriffs and police chiefs by all law enforcement agencies. The Washington criminal justice training commission shall amend its contract for collection of statewide crime data with the Washington association of sheriffs and police chiefs:

(a) To include a table, in the annual report of crime in Washington produced by the Washington association of sheriffs and police chiefs pursuant to the contract, showing the total number of actual offenses and the number and percent of the offenses that are domestic violence incidents for the following crimes: (i) Criminal homicide, with subtotals for murder and nonnegligent homicide and manslaughter by negligence; (ii) forcible rape, with subtotals for rape by force and attempted forcible rape; (iii) robbery, with subtotals for firearm, knife or cutting instrument, or other dangerous weapon, and strongarm robbery; (iv) assault, with subtotals for firearm, knife or cutting instrument, other dangerous weapon, hands, feet, aggravated, and other nonaggravated assaults; (v) burglary, with subtotals for forcible entry, nonforcible unlawful entry, and attempted forcible entry; (vi) larceny theft, except motor vehicle theft; (vii) motor vehicle theft, with subtotals for autos, trucks and buses, and other vehicles; (viii) arson; and (ix) violations of the provisions of a protection order or no-contact order restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, provided that specific appropriations are subsequently made for the collection and compilation of data regarding violations of protection orders or no-contact orders;

(b) To require that the table shall continue to be prepared and contained in the annual report of crime in Washington until that time as comparable or

more detailed information about domestic violence incidents is available through the Washington state incident based reporting system and the information is prepared and contained in the annual report of crime in Washington; and

(c) To require that, in consultation with interested persons, the Washington association of sheriffs and police chiefs prepare and disseminate procedures to all law enforcement agencies in the state as to how the agencies shall code and report domestic violence incidents to the Washington association of sheriffs and police chiefs.

[1996 c 248 § 6; 1995 c 246 § 22; 1993 c 350 § 3; 1984 c 263 § 21; 1981 c 145 § 5; 1979 ex.s. c 105 § 3.]

RCW 26.50.010. Definitions

As used in this chapter, the following terms shall have the meanings given them:

(1) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.

(2) "Family or household members" means spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(3) "Dating relationship" means a social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) The length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties.

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

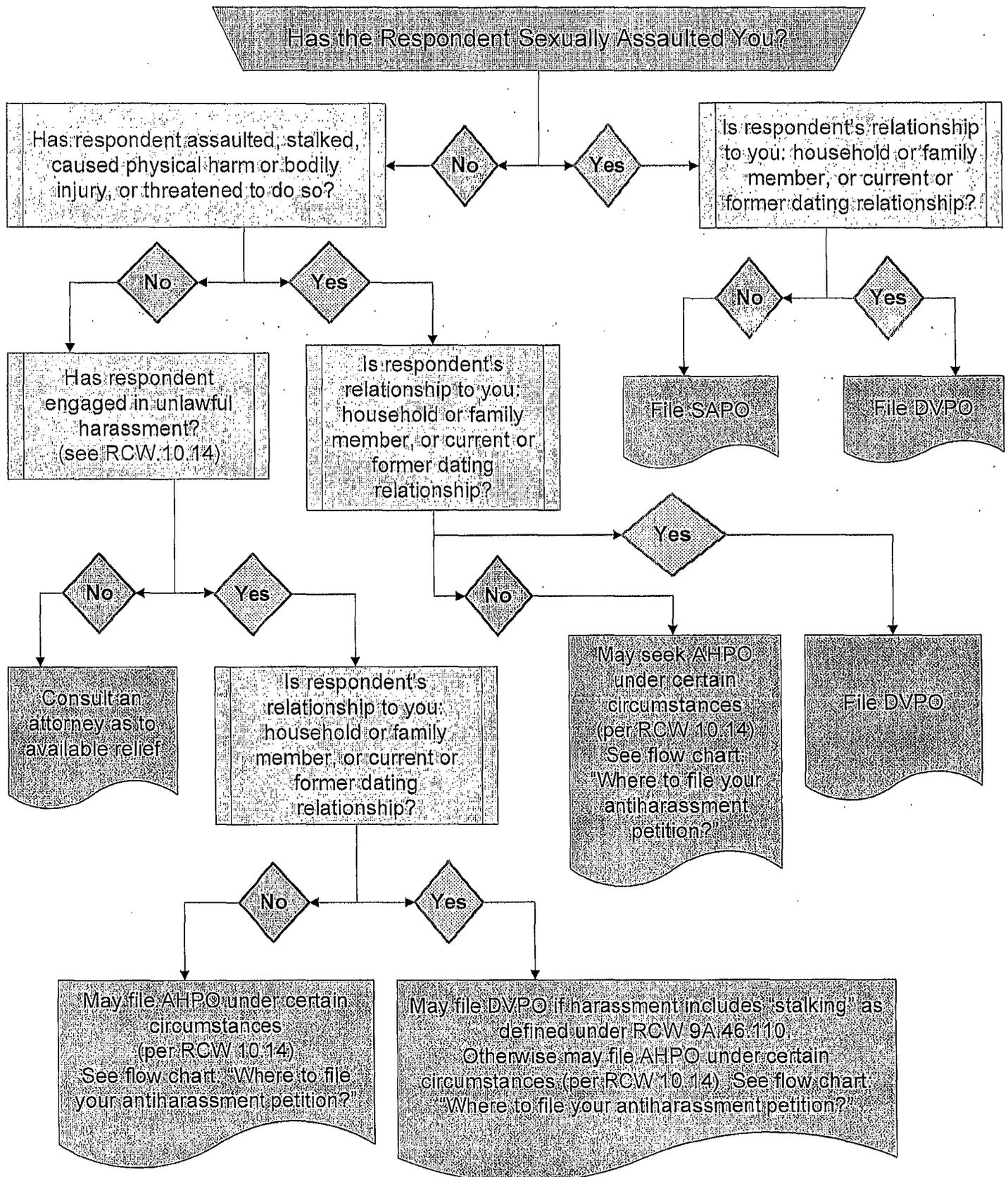
(5) "Judicial day" does not include Saturdays, Sundays, or legal holidays.

(6) "Electronic monitoring" means a program in which a person's presence at a particular location is monitored from a remote location by use of electronic equipment.

(7) "Essential personal effects" means those items necessary for a person's immediate health, welfare, and livelihood. "Essential personal effects" includes but is not limited to clothing, cribs, bedding, documents, medications, and personal hygiene items.

[2008 c 6 § 406, eff. June 12, 2008; 1999 c 184 § 13; 1995 c 246 § 1.
Prior: 1992 c 111 § 7; 1992 c 86 § 3; 1991 c 301 § 8; 1984 c 263 § 2.]

What type of protection order should you file?



Guidelines for Domestic Violence Protection and Antiharassment Orders

- Domestic violence is learned behavior.
- Domestic violence typically involves controlling behavior encompassing different types of abuse.
- It is the perpetrator—*not* substance abuse, *not* the victim, *not* the relationship—that causes domestic violence.
- Danger to the victim and children is likely to increase at the time of separation.
- The victim's behavior is often a way of ensuring survival.

Civil protection orders

1. Jurisdiction

Superior, District, and Municipal Courts may issue temporary and permanent orders, except District and Municipal Courts must transfer certain cases to Superior Court after entry of a temporary order. RCW 26.50.010(4) and RCW 26.50.020(5).

2. Transfer of jurisdiction

- Superior Court is already hearing this matter or a RCW Chap. 13.34 case.
- Issues exist involving children.
- Petitioner requests exclusion of respondent from a shared dwelling. RCW 26.50.020(5)

3. Availability

Available under RCW 26.50 (civil protection orders), RCW 26.09 (dissolution and legal separation), RCW 26.10 (third-party custody), and RCW 26.26 (paternity). RCW 26.50.025.

4. Parties

"Family or household members" includes:

- Spouses and former spouses.
- Parents of a child.
- Adults related by blood or marriage.
- Adults who are presently residing together or who have resided together in the past.

- Persons 16 years of age or older who are presently residing together or who have resided together in the past *and* who have or have had a dating relationship.
- Persons 16 years of age or older who have or have had a dating relationship.
- Persons with a biological or legal parent-child relationship, such as stepparents or grandparents. RCW 26.50.010(2).

5. Definition

"Domestic violence" means physical harm, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking. RCW 26.50.010(1).

6. No contact

No contact requested? Is some contact desired? If so, be specific as to what is restrained. RCW 26.50.070.

7. Exclusion – location

Exclusion from a location requested? Petitioner's residence, workplace, school, or child's daycare or school. RCW 26.50.060(1)(b) and 26.50.070.

8. Prohibition – distance

Prohibition from a specified location requested? Set the distance from the specific locations so law enforcement can reasonably measure and enforce, i.e., 100 feet or 100 yards. RCW 26.50.060(1)(c) and 26.50.070.

9. Children

- Who is the legal custodian?
- Are there any existing court orders affecting custody? Check JIS or JABS. RCW 26.50.135(c).
- Parenting plans are not necessary, but visitation can be established. RCW 26.50.060(1)(d).

10. Personal property

Court has jurisdiction to award:

- "Essential personal effects" which means items necessary for a person's immediate health, welfare, and livelihood. RCW 26.50.010(7).
- Use of a vehicle. RCW 26.50.060(1)(k) and (l).

11. Firearms

- Court *shall* require surrender to law enforcement or other person if *clear, cogent, and convincing* evidence shows use, display, or threat with firearm or other deadly weapon in a felony or ineligibility of respondent to possess a firearm.
- Court *may* require surrender if the above is shown by a *preponderance*. RCW 26.50.060(1)(j), RCW 26.50.070, RCW 9.41.040 and RCW 9.41.800.

Note: Federal firearms prohibition applies when: (1) the person had actual notice of the hearing and an opportunity to be heard; (2) the order restrains the person from harassing, stalking or threatening an intimate partner or child; and *either* (3) the court finds the person presents a credible threat of harm to the intimate partner or child *or* (3) the order contains explicit language restraining the person from using, attempting to use or threatening to use physical force against the intimate partner or child. 18 USC 922(g)(8). The majority of permanent orders entered will invoke the federal prohibition, *but* the federal definition of an "intimate partner" only includes a spouse, former spouse, other parent of a child, or a cohabitant or former cohabitant. 18 USC 921(32). Washington protection orders can also be issued in cases involving relatives by blood or marriage and dating relationships.

12. Duration

Fixed period or permanent unless children involved, then one year if the order is issued under RCW 26.50,

but can be otherwise under RCW chapters 26.09, 26.26 and 26.10. RCW 26.50.060(2).

13. Realignment of the parties

Mutual orders are *not* allowed, but the court may realign the designation of the parties where the court finds the original petitioner is the perpetrator. RCW 26.50.060(4) and (5).

14. Evidence rules

Evidence rules do not apply. ER 1101(c)(4).

Oral instructions to accompany entry of protection orders

- A violation is a criminal offense.
- Any assault that is a violation is a Class C felony.
- A violation will result in an inability to possess firearms including revocation of concealed weapons permits.
- A violation is grounds for immigrant deportation.
- This is the court's order. The petitioner cannot modify the order.

Criminal no-contact orders

1. Availability

May be issued before, after, or concurrent with civil protection orders.

2. Pre-arraignment

Order may be issued after an arrest or a charge. RCW 10.99.040(2). Expires at arraignment or within 72 hours if no charges filed. RCW 10.99.040(5).

3. Arraignment

Court may extend the pre-arraignment order or issue a new one. Order expires if charges are dismissed or upon acquittal. RCW 10.99.040(3).

4. Post-trial

Order may be issued after a finding of guilt. Expires upon termination of the sentence or elimination of that condition of the sentence. RCW 10.99.050(1).

Antiharassment orders

1. Jurisdiction

District Court is primary and Superior Court has concurrent jurisdiction to accept transfers. RCW 10.14.150.

2. Transfer of jurisdiction

- When the respondent is under the age of 18.
- When other meritorious reasons exist. RCW 10.14.150.

3. Petitioners

Petitioners do not need to establish a special relationship to the respondent and can include parents of minors under 18 years of age requesting an order restraining an adult. RCW 10.14.040(6).

4. Minor petitioner — minor respondent

Parent or guardian may request an antiharassment order on behalf of a minor against a respondent who is less than 18 year of age who has committed or been investigated for an offense against the minor. RCW 10.14.040(7).

5. Unlawful harassment

“Unlawful harassment” requires a knowing and willful course of conduct that seriously annoys, alarms, harasses, or is detrimental and serves no legitimate or lawful purpose. “Reasonable person” or “reasonable parent” standard. RCW 10.14.020(1).

6. Relief available

Antiharassment order may:

- Restrain contact.
- Restrain surveillance.
- Prohibit respondent from being within a specified distance of petitioner’s residence or workplace.
- Require surrender of weapons pursuant to RCW 9.41.800.
- Prohibit a minor respondent from attending petitioner’s child’s school. RCW 10.14.080(6) and (7).

7. Duration

One year maximum unless the court finds the respondent is likely to resume harassment once the order expires, then it can be for a fixed or permanent duration. RCW 10.14.080(4).

8. Violations

Violations by adults are gross misdemeanors or punishable by contempt. Violations by respondents less than 18 years of age are punishable by contempt under RCW Chapter 7.21. RCW 10.14.120.

Minors as parties in DV or antiharassment cases

- Guardian must appear for minors except for 16- and 17-year-olds in civil protection order proceedings. RCW 4.08.050 and RCW 26.50.020(2) and (3).
- Procedure is at the discretion of the court with most courts appointing a parent, public defender, or other adult to serve as guardian.

Perpetrator treatment

1. Availability

May be ordered as part of a civil protection order. RCW 26.50.060(1)(e).

2. Certified program required

Treatment by an agency certified under WAC 388-60 should be required. RCW 26.50.150.

3. Anger management

Anger management classes are not appropriate for perpetrators and are not certified.

4. Other types of counseling

Marital, couple, and religious counseling are not appropriate for perpetrators as they implicate the victim as part of the problem.

Modification/termination requests

1. Procedure

Require notice and hearing. RCW 26.50.130.

2. Court discretion

Public policy gives the court discretion to modify, terminate, or maintain the order. *State v. Dejarlais*, 136 Wn.2d 939, 969 P.2d 90 (1998).

3. Educate petitioners

Educate the petitioner on the alternatives to termination of the protection order such as eliminating portions or modifying restrictive language.

4. Dismiss with grace

Dismiss the petition, not the petitioner. Remind the petitioner that the court is always available in the event an order is needed in the future.

Foreign protection orders

1. Definition

"Foreign protection order" means an injunction or order related to domestic or family abuse, sexual abuse, or stalking. RCW 26.52.010(3).

2. Applicability

Applies to civil or criminal orders issued by a court of a state, a U.S. territory or possession, Puerto Rico, the District of Columbia, the U.S. military, or a Native American tribe. RCW 26.52.010(3).

3. Validity

The issuing court must have jurisdiction over the parties and subject matter, and the person under restraint must be given notice and the opportunity to be heard. RCW 26.52.020.

4. Washington State filing unnecessary

Filing is not a prerequisite to enforcement in this state, but the clerk must file a proper foreign protection order without a fee if requested. RCW 26.52.030

5. Child custody disputes

Child custody disputes are resolved by applying RCW Chap. 26.27 and the PKPA 28 U.S.C. 1738A. RCW 26.52.080(1).

6. Writ of habeas corpus

Writ of habeas corpus must be issued from a Superior Court in Washington in order for law enforcement to remove the child from his or her current placement absent abuse or neglect. RCW 26.52.080(2).

7. Violations

Violations are punishable under RCW 26.50.110. RCW 26.52.070.

Barriers to victims leaving

1. Perpetrator violence

Perpetrator's escalating violence and control.

2. Economic barriers

Lack of housing, loss of income for self and children, loss of health, transportation, or other resources.

3. Protection of the children

Connection to the perpetrator through the perpetrator's access to the children.

4. Lack of support

Religious, cultural, or family values that the family unit must be preserved at all costs; or victim blaming by service providers, law enforcement, or the courts.

5. Effects of trauma

Immobilization by psychological and physical trauma.

6. Inadequacy of court response

Failure of court to hold perpetrators accountable or protect victims.

Web sites and resources

- Forms: www.courts.wa.gov/forms.
- *Domestic Violence Manual for Judges*, produced by the Washington State Gender and Justice Commission.
- American Bar Association: www.abanet.org.
- National Coalition Against Domestic Violence: www.ncadv.org.
- Washington State Coalition Against Domestic Violence, 8645 Martin Way NE, Suite 103, Olympia, WA 98516, 360/407-0756.

Written by Commissioner William G. Knebes, 2001, and reviewed by several judges and domestic violence experts, for the Washington State Administrative Office of the Courts. This project is supported by Grant #96-WR-NX-0017, awarded by the Violence Against Women Office, Office of Justice Programs, U.S. Department of Justice, to the Washington State Gender and Justice Commission. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice. Edited and printed February 2002.

Washington Pattern Forms Committee

INSTRUCTIONS ON HOW TO FILL OUT THE FORMS FOR ANTIHARASSMENT

Prepared by the
Office of the Administrator for the Courts
Olympia, Washington
July 2011

Follow These Instructions Carefully. Please **type or print** all information requested.

These forms are used to get an *Antiharassment* order of protection.

Before you start filling out these forms, make sure you have the right type of forms.

Antiharassment:

You can get an *Antiharassment* order of protection if the person you want protection from:

- has acted without legitimate or lawful purpose in a way that shows a continuity of purpose;
- has directed the actions to you or your child;
- and the things the person said or did have seriously alarmed, annoyed or harassed you and were the kind of things that would cause a reasonable person substantial emotional distress and have actually caused you substantial emotional distress;
- or the person has done or said things that would cause a reasonable parent to fear for the well being of their child.

Domestic Violence:

If the actions involve physical harm, an assault, a sexual assault, stalking, or threats of physical harm, assault or sexual assault, or stalking and the person you are seeking protection from is a "family or household member," you need to get a *Domestic Violence* Order of Protection instead of an *Antiharassment* Order of Protection. "Family or household member" has a wide meaning and includes current or former husbands, wives, domestic partners, family members, roommates and in some cases people who have dated.

Sexual Assault:

If the actions involve a sexual assault, and the person who committed the sexual assault is not a family or household member, you need to get a *Sexual Assault* Protection Order instead of an *Antiharassment* Order of Protection.

Vulnerable Adult:

If the petition is being filed by or for a vulnerable adult who has been, or is threatened with being abandoned, abused, neglected or financially exploited, you need to get a *Vulnerable Adult* protection order instead of an *Antiharassment* Order of Protection.

Get More Information:

If you are not sure which petition is best for you, look at all the forms. Each set has a more detailed explanation of whom they apply to. All of the forms are available from the Clerk of the Court, from www.courts.wa.gov/forms, and from www.washingtonlawhelp.org.

Where should you file your case?

Generally, you must file your case in the district court; but there are some exceptions when you must file your case in superior court:

- the Respondent is under the age of 18 years;
- a superior court has exercised or is exercising jurisdiction over a proceeding involving you and the other party;
- the case would interfere with respondent's care, control or custody of respondent's minor child; or

In this case, you would need to file under a Divorce, Third Party Custody, Parentage, CHINS, or ARY Action.

- your case involves disputes over title, ownership, or possession of real property; such as landlord tenant, boundary dispute.

In this case, you would need to file a Summons and Complaint (or if married to respondent, under a Divorce Action).

If you are ready to ask for an ***Antiharassment*** protection order, continue with the instructions.

FORMS NEEDED

To begin an action for an order for protection from civil harassment, you will need the following forms:

- (1) Motion and Declaration for Waiver of Filing Fees and Surcharges - Harassment
- WPF UH-02.0100;
- (2) Financial Statement – Harassment – WPF UH-02.0110
- (3) Order Re Wavier of Filing Fees and Surcharges - Harassment
- WPF UH-02.0120;

- (4) Petition For An Order For Protection - Harassment
- WPF UH-02.0200;
- (5) Confidential Information Form
- WPF UH 01.0600
- (6) Addendum to Confidential Information Form
- WPF UH 01.0610
- (7) Law Enforcement Information Sheet - All Cases 01.0400;
- (8) Temporary Protection Order and Notice of Hearing
- WPF UH-03.0200;
- (9) Return of Service (Unlawful Harassment)
- WPF UH-04.0110; and
- (10) Order for Protection from Civil Harassment
- WPF UH-04.0500.



These forms should be included in this packet. If you are missing any forms or pages inform the clerk.

Complete steps 1 through 10 below.

Step 1 – Fill in the Heading of Each Form.

You are the **Petitioner**. The person who is harassing you is the **Respondent**. Your name and the respondent's name should be filled in the heading of each form. When you file your papers with the clerk of the court you will be given a case number. Write that case number in the upper right hand corner of every form you complete.

Step 2 – Waiver of Filing Fees and Surcharges

If you have funds to pay fees and you are not seeking protection from someone who has stalked, sexually assaulted you or committed acts of domestic violence against you, skip to step 3.

- (1) Motion and Declaration for Waiver of Filing Fees and Surcharges - Harassment - WPF UH-02.0100

A. If you cannot pay the fees in your case:

Check paragraph 2.1 to ask the court to waive filing fees and surcharges if you cannot afford to pay them. In the declaration, check the first box in paragraph 3.1 and make sure you complete the Financial Statement – Harassment, form UH 02.0110. If there is more information you want the court to know about your finances, check the second check box in paragraph 3.1 and write or print the information you want the court to know.

B. If you are seeking protection from someone who has stalked, sexually assaulted or committed acts of domestic violence against you or the minor(s) listed in your petition,

you may ask the court to waive fees in your case whether or not you have the funds to pay filing fees, court costs or service fees:

Check paragraph 2.2 and then check the sub-box that describes the type of harm you are seeking protection from. Also check the box that applies in paragraph 3.2.

(2) Financial Statement – Harassment - WPF UH-02.0110

If you are asking the court to waive filing fees and surcharges because you cannot afford to pay them, fill in as much information as you can in the Financial Statement. File this form with your motion.

(3) Order Re Wavier of Filing Fees and Surcharges - Harassment - WPF UH-02.0120

Fill out the caption and sign and print your name and the date at the bottom of the form. Bring this order to court with you. The judge or court commissioner will complete the rest of the form.

Step 3 – Petition for an Order for Protection - Harassment - WPF UH-02.0200

Your request for an order for protection starts by filing a petition with the court.

Questions to screen for the court's jurisdiction:

Answer the questions in the box at the beginning of the petition. If you answer "yes" to questions 1 and 2, or 3, 4, or 5, you need to file your petition in superior court. If you answer "yes" to 6 and 7, ask for help. You may need to file a petition for a *Domestic Violence Order* for Protection or for a *Sexual Assault Protection Order*, instead.

Complete the rest of the form:

Provide the information requested in paragraphs 1 through 5 of the petition. In paragraph 2, check the box that applies to you. If you are the victim of unlawful harassment and you are the parent of a child under age 18, who is in need of protection, you may check both boxes. The questions in paragraph 3 are to help the court determine whether it has jurisdiction to proceed with your petition. If none of the boxes apply to your situation, leave all of the boxes in paragraph 3 blank. Paragraph 4 asks for information about minors needing protection. The name, age, race, and sex of the child is needed to help the court avoid issuing a protection order that contradicts another protection order. Paragraph 5 asks for other court cases or protection orders involving you and the respondent. This information is also required to help the court avoid issuing a protection order that contradicts another protection order.

In the next section, you may ask for the relief you need. If an emergency exists and you might suffer great and irreparable harm if a temporary restraining order is not issued immediately, you may request a temporary order that will last fourteen (14) days. To request a temporary order, check the box next to the protection you are requesting, in the left-hand column. If you request a temporary order, you must tell the court in a statement the reasons why you feel that you might suffer great and irreparable harm if a temporary restraining order is not issued immediately. To

request an order for protection, check the box in the second column for the type of protection you are requesting. For both orders you may check more than one box.

In the **Statement** section, you are asked to tell the court why you are requesting an order for protection. Enough information should be provided in the declaration to allow the judge or commissioner to decide whether an order for protection should be issued. You can assist the judge or commissioner in making this determination by listing the approximate dates and places the harassment occurred and by briefly describing how the respondent harassed you. Remember, if you requested a 14-day temporary protection order, you must also tell the court in your statement the reasons why you feel that you might suffer great and irreparable harm if a temporary protection order is not issued immediately.

When you finish your statement, complete the certification at the bottom of page 2 of the petition. You must fill in the city and state where you are signing the petition.

Below your signature, you need to list an address where the respondent can arrange to have you served with legal documents. You may list an address that is not your residential address where you agree to accept legal documents.

Step 4 - Confidential Information Form – WPF UH-01.0600, Addendum to Confidential Information Form – WPF UH-01.0610.

The Confidential Information Forms gives the court the information it needs to correctly enter your case in the judicial information system. Complete the information requested. If you are listing more than two children in the petition, use an Addendum to Confidential Information form to provide information about additional children.

Step 5 – Law Enforcement Information Sheet - WPF All Cases-01.0400.

The Law Enforcement Information Sheet provides law enforcement officials with information that will assist them in serving your papers and enforcing your order. **This form is confidential and will not be served on the respondent.** This form must be completed in every case.

The Law Enforcement Information Sheet provides law enforcement officials with detailed information about the respondent. The Law Enforcement Information Sheet goes out to the law enforcement agency serving the Order of Protection on the respondent. **The information contained on the form is for law enforcement and court officials only.** Your address and phone number will not be shown or given to the respondent. If you want your address to remain confidential, you may list the name and telephone number and address of someone whom law enforcement can contact to reach you.

Provide as much information as possible about the respondent. If you want law enforcement officials to serve your papers you must list the respondent's current address. Law enforcement personnel cannot enter your order on the statewide law enforcement computer system unless you

include at least the year of the respondent's birth where the respondent's date of birth is requested.

Be sure you complete the hazard information section of the Law Enforcement Information Sheet. This information is for the safety of law enforcement officials while enforcing your order for protection.

Step 6 – Temporary Protection Order and Notice of Hearing - WPF UH-03.0200.

This form should be completed if you requested an ex parte temporary *Antiharassment* protection order in the Petition for an Order for Protection - Harassment (WPF UH-02.0200). **If you did not request an ex parte temporary Antiharassment protection order in your petition, skip the remainder of this section and go to Step 7.**

The table on page one asks for identification information about the minors addressed in the order.

You should fill in the next section to the best of your ability. Check the box or boxes that correspond(s) with the temporary restraints you requested in the Petition for an Order for Protection. In the next section, regarding the clerk of court, be careful to make sure the correct law enforcement agency is listed. In the same section, check the appropriate box regarding service of the temporary order upon the respondent. If you want law enforcement officials to serve the respondent with your papers, be careful to make sure the correct law enforcement agency is listed in the blank. If you are unsure which law enforcement agency to fill in, do not fill in the blank. When you present your papers to the judge, tell the judge that you would like a law enforcement agency to serve the respondent and explain why you were unable to fill in the blank. If you need help or have questions about this section, ask the clerk.

The next section tells the respondent to appear at the next hearing. You must also appear, or the court will not grant the relief you are requesting.

Immediately below the section directing the respondent to appear, is a sentence stating "This Temporary Order for Protection is effective until the next hearing date and time shown below the caption on page one." Remember to fill in the date, time and place of the next hearing on page 1. The clerk will provide you with the hearing information.

Once you have finished filling in the order, sign the Order for Protection in the lower left corner of page 2, on the line for the petitioner.

Step 7 – Return of Service (Unlawful Harassment) - WPF UH-04.0110.

This form is to be completed by the person who serves your papers. If at all possible, **have law enforcement officials serve your papers on the respondent.** You cannot serve your papers yourself.

If someone other than a law enforcement official serves your papers, you must make sure the respondent is personally served not less than 5 court days prior to the scheduled hearing. The person serving your papers must be over 18 years of age and a Washington resident. After serving your papers, this person must complete the return of service.

You should contact the law enforcement official or other person who is serving your papers several days prior to your hearing to make sure your papers were served.

If the respondent is not served at least 5 court days prior to your hearing, the judge or court commissioner cannot issue your Order for Protection unless the respondent appears at the hearing. If the respondent was not properly served, go to your hearing so that a new hearing date can be set. At this time you can request that your temporary protection order be reissued. If you want your temporary protection order reissued, you need to present an Order Reissuing Ex Parte Temporary Protection Order (WPF UH-03.0240) to the court. Once the court signs the Order Reissuing Ex Parte Temporary Protection Order, a copy of the Order Reissuing Ex Parte Temporary Protection Order, the Temporary Protection Order and a Notice of Hearing (WPF UH-3.0200) must be served on the respondent prior to your hearing. Copies of the Order Reissuing Ex Parte Temporary Protection Order and Notice of Hearing forms are available from the clerk. There is no filing fee for the reissuance of a temporary protection order since your case is already open.

Step 8 – Order for Protection - Harassment - WPF UH-04.0500.

The Order for Protection is the paper that legally restrains the respondent from further harassing you.

In paragraph 2, check the box that applies to the manner in which the respondent was served notice of the hearing. Paragraph 3 asks for identification information about the minors addressed in the order.

You should fill in the next section to the best of your ability. Check the box or boxes that correspond(s) with the temporary restraints you requested in the Petition for an Order for Protection. In the next section, regarding the clerk of court, be careful to make sure the correct law enforcement agency is listed. In the same section, check the appropriate box regarding service of the temporary order upon the respondent. If you want law enforcement officials to serve the respondent with your papers, be careful to make sure the correct law enforcement agency is listed in the blank. If you are unsure which law enforcement agency to fill in, do not fill in the blank. When you present your papers to the judge, tell the judge that you would like a law enforcement agency to serve the respondent and explain why you were unable to fill in the blank. If you need help or have questions about this section, ask the clerk.

The last paragraph has a blank for the expiration date of the order. You do not need to fill in the blank. If the Order for Protection is granted, the judge will fill in the blank.

Once you have finished filling in the order, sign the Order for Protection in the lower left corner of page 2, on the line for the petitioner.

Step 9 – What to Do with the Completed Forms.

Give your completed forms to the clerk. You should ask for photocopies of all the forms you complete. If someone other than a law enforcement official will be serving your papers you will need to get certified copies of your forms for that person to serve.

Step 10 – Go to Your Hearing.

You must appear in court on your scheduled hearing date. If you do not appear at your hearing, an Order for Protection will not be issued.

General Information

If you decide that your Order for Protection is no longer necessary or that its conditions should be modified, you may request a hearing to change your order. To modify the conditions of your Order for Protection or to terminate your Order for Protection, complete the Motion to Modify/Terminate Order for Protection – Harassment form UH 09.0100. To schedule the motion, use form UH 02.0400, Notice of Hearing. Both of these forms are available from the clerk. The clerk will also provide you with hearing information for paragraph 2 of the Notice. You will need to arrange for service of the motion and notice of hearing on the respondent.

If someone other than a law enforcement official serves your papers, you must make sure the respondent is personally served not less than 5 court days prior to the scheduled hearing. The person serving your papers must be over 18 years of age and a Washington resident. After serving your papers, this person must complete the return of service.

You should contact the law enforcement official or other person who is serving your papers several days prior to your hearing to make sure your papers were served.

OFFICE RECEPTIONIST, CLERK

To: George Ahrend
Cc: Bryan P Harnetiaux; Stewart A. Estes; Phil Talmadge; jconnelly@connelly-law.com; Nathan Roberts; Spillane, Mary; dferm@williamskastner.com
Subject: RE: Washburn v. City of Federal Way, SC #87906-1

Rec'd 5-28-13

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: George Ahrend [<mailto:gahrend@trialappeallaw.com>]
Sent: Tuesday, May 28, 2013 1:47 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Bryan P Harnetiaux; Stewart A. Estes; Phil Talmadge; jconnelly@connelly-law.com; Nathan Roberts; Spillane, Mary; dferm@williamskastner.com
Subject: Washburn v. City of Federal Way, SC #87906-1

Dear Mr. Carpenter,

On behalf of the Washington State Association for Justice Foundation, a proposed amicus brief is attached to this email. The Foundation previously submitted a letter application to appear as amicus via email on May 21, 2013. Counsel for the parties and amicus are being served simultaneously with a copy of this email, in accordance with a prior agreement among counsel.

Respectfully submitted,

--
George Ahrend
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Ephrata WA 98823
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This email is confidential. If you are not the intended recipient, please notify the sender and delete it from your system. Thank you.