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 ORIGINAL

NO. 66534-1-I

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COURT OF APPEALS, DIVISION I,  
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, a deceased person,

Respondents,

v.

CITY OF FEDERAL WAY, a Washington municipal corporation,

Appellant.

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BRIEF OF RESPONDENTS

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## A. INTRODUCTION

This case arises from the tragic, preventable murder of Baerbel Roznowski at the hands of her estranged ex-boyfriend, Chan Kim. Roznowski was killed after a City of Federal Way (“City”) police officer Andrew Hensing, served Kim with a harassment prevention order, but then left him alone with a person who was clearly Roznowski, in her home – in clear and immediate violation of the terms of the order that had just been served. Hensing had not bothered to read the order or the Law Enforcement Information Sheet (“LEIS”) that accompanied the court’s order before undertaking service on Kim. Had he done so, he would have been aware that Kim had a history of domestic violence and Korean was his principal language, rendering any communication in English suspect. He would also have known that the female figure he observed was likely Roznowski as service took place at her home. Roznowski obtained the order precisely because she knew Kim was unstable, violent, and likely to retaliate upon being told to leave her home.

Later that day, when other officers finally arrived at Roznowski’s house, they found that she had just been repeatedly stabbed, and she died a short time later.

After learning what had transpired, Roznowski’s daughters (and her estate) (hereinafter “Washburn”) brought claims against the City for

negligence. The City moved for dismissal, arguing that it owed no duty to Roznowski (or other victims of harassment) under the public duty doctrine, essentially arguing that anti-harassment orders under RCW 10.14, though issued by a court, are something of a “second class” order not worthy of enforcement. The trial court denied dismissal and the case was tried to a verdict in the amount of \$1.1 million in favor of the Estate.

Although the City attempts to argue *sub rosa* that there was insufficient evidence to support the jury’s verdict or other people like King County’s domestic violence advocate were fault, ultimately, the only issues on appeal are the public duty doctrine and the insufficiency of the verdict as to Roznowski’s daughters.<sup>1</sup> The City is wrong in concluding that the public duty doctrine applies here at all. Even if the so-called exceptions to that doctrine are examined, they only serve to underscore the fact that the claims here are not barred by the doctrine. The City owed a duty of care to a victim like Roznowski, a victim that was ill-served by City police officers who failed to read anti-harassment prevention orders and attendant explanatory information when serving them. The jury’s verdict for the Estate should stand.

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<sup>1</sup> The City concedes the trial court’s liability and damages instructions were proper and raises no questions regarding the trial court’s evidentiary rulings.

The trial court here did not abuse its discretion in ordering a new trial where the jury specifically found the City was negligent in its conduct toward Roznowski and that such negligence was the proximate cause of harm to her daughters, but, nevertheless, awarded them no damages whatsoever.

B. ASSIGNMENTS OF ERROR

Washburn acknowledges the assignments of error in the City's brief, but notes that the City failed to differentiate between the assignments of error and the issues pertaining to them as is required by the Rules of Appellate Procedure. RAP 10.3(a)(4). *See also*, RAP, Form 6.

The issues are properly formulated as follows:

1. Where a harassment victim obtains a protective order under RCW 10.14, and a city's police officers serve that order, does the city owe a duty to the victim to properly train its officers on domestic violence issues, to ensure that its officers read the anti-harassment prevention order and the accompanying LEIS, and enforce the terms of the order as issued by the court?

2. Did the trial court abuse its discretion in awarding a new trial confined to the issue of a victim's daughters' damages for loss of parental consortium where there was liability on the City's part and ample, uncontested evidence of the harm to their mother/daughter relationships, but the jury awarded them no damages?

C. STATEMENT OF THE CASE

The City devotes nearly half of its brief in its Introduction and Statement of the Case to a one-sided, sanitized version of the facts in this

case, sprinkled with numerous argumentative observations.<sup>2</sup> The City neglects to differentiate between the evidence that was before the trial court on its motions for summary judgment, and the evidence ultimately adduced at trial. This is not surprising, as it appears to be the City's goal on appeal to argue to this Court, without formally doing so, that insufficient evidence supported the verdict and others were at fault. This Court should reject the City's transparent effort at "revisionist history."

This more appropriate statement of the case follows.

Baerbel Roznowski was a woman of German descent who was amiable and fun-loving, according to her daughters and her friend. RP (Grayson): 4-9; (Washburn): 7, 13; (Loh): 8.<sup>3</sup> Her second husband was in the United States Army, causing the family to move frequently, residing at times in Germany, Washington State, Arizona, and California. RP (Loh 12/13/10): 6-12; (Washburn): 5-16; (Grayson): 4-7. Roznowski had two daughters, Janet Loh and Carola Washburn.

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<sup>2</sup> RAP 10.3(a)(5) requires that a statement of the case be a "fair recitation of the facts and procedure relevant to the issues presented for review, and procedure relevant to the issues presented for review, without argument." Argumentative assertions abound in the City's statement of the case. For example, the extended argumentative passages in the City's brief at 8; 8 n.3; 10; 12; 15 ("There is no dispute ..."); 20 ("... Judge Darvas reasoned out of whole cloth ..."); 21 n.9 ("Judge Darvas repeated her novel determination..."); 22; 23; 24. Additionally, the City frequently mischaracterizes the testimony of the witnesses. Rather than reply to each such mischaracterization, Washburn simply provides a proper Statement of the Case.

<sup>3</sup> The transcript has been prepared by witness, rather than chronologically. Each witness's testimony will be referenced herein by the witness name and page number.

After a divorce, (Loh 12/14/10): 16-17, Roznowski met Chan Kim. RP (Loh 12/15/10): 3-4. Kim spoke Korean as his primary language; his capacity in English was rudimentary, described as being no better than that of a child. RP (Loh 12/15/10): 11, 52; (Washburn): 28-29; RP (Ganley): 18. Kim could not read English; Roznowski translated documents for him. RP (Loh 12/15/10): 12. Kim had serious mental health issues occasioned by a sports injury in Korea that caused him to act and speak slowly. RP (Ko): 14-15. He had outbursts of rage. Ex. 1; RP (Ganley): 21. Roznowski called 911 in 2006 because he came close to hitting her. Ex. 1; RP (Loh 12/15/10): 6; RP (Washburn): 34. He had a history of violent altercations with his son, Ex. 1, which even the City's police expert conceded was a domestic violence episode. RP (Ovens): 82. Roznowski was afraid of Kim. Ex. 1; RP (Washburn): 63.

Kim came to control Roznowski's life in a series of ways. RP (Loh 12/15/10): 5. He moved into her Federal Way house, gradually making it more and more of a mess. RP (Washburn): 30. His encroachment on Roznowski's living space forced her into a small corner of the house. RP (Washburn): 32-33. He was rude. RP (Washburn): 33. Kim tried to control Roznowski's finances, claiming she owed him \$9000. Ex. 1. He tried to cut her off from her family; whenever Roznowski visited her daughters in California, Kim refused to stay in the daughters' home or a

hotel, staying instead in his van. RP (Loh 12/15/10): 32; (Washburn): 29, 31-32.

Worried that their happy mother had become very unhappy with Kim's presence in her home, Roznowski's daughter urged her to move to California to be with them, she finally agreed, even looking at homes near Mrs. Washburn. RP (Loh 12/15/10): 13-15; (Washburn): 37-38. In order to do so, she needed to sell her Federal Way house, and in order to sell it, she needed to remove Kim from that home. RP (Loh 12/15/10): 8-10, 39-40.

Roznowski had an altercation with Kim on April 30, 2008 and she was compelled to call 911. CP 842. The call related that a physical DV (domestic violence) was in progress. *Id.* Federal Way Officers Parker and Blalock came to Roznowski's home in response.<sup>4</sup> CP 841-42. They found Roznowski waiting outside her home. CP 1251. She explained to the officers that she had gotten into an argument with Kim. CP 1252, 1253. Parker advised Roznowski that she could obtain an anti-harassment order and also obtain a court-ordered eviction of Kim from the house. *Id.* Officer Blalock told Kim to "take a walk," and he left the home. CP 842,

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<sup>4</sup> The City did not submit those officers' trial testimony as part of the appellate record.

959.<sup>5</sup> The officers gave Roznowski a copy of a DV booklet. CP 842, 851-75.

Given the officers' advice, Roznowski contacted Lorinda Tsai, a domestic violence advocate for the King County Prosecutor's Office, on May 2, 2008. RP (Tsai): 3, 6. Roznowski determined to seek a harassment prevention order to restrain Kim from being in her house or near her. *Id.* at 11-12. Roznowski and Tsai expected that such an order would work to oust Kim, and that the police would enforce it. *Id.* at 13-16.

Roznowski thereafter went to the Kent Regional Justice Center to obtain an order. She filled out the necessary paperwork; in her supporting affidavit, Roznowski explained that Kim was her estranged boyfriend and that he was living with her in her home. Ex. 1. She also established that she had good reason to be afraid of him:

Last year his outburst frightened me, I called 911, he came close to hitting me. He left my place as promised. Within 15 min[utes] I received several calls from him. I changed the locks except for one door. He is capable of physical violence. I witnessed him beating his oldest son in the past. In his present state he can easily retaliate with me.

Ex. 1. Commissioner Carlos Vilategui of the King County Superior Court heard Roznowski's petition, including these statements, and found that a

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<sup>5</sup> That Kim immediately obeyed Parker's direction strongly implies he would have complied with directions from Hensing, had they been given. CP 418-19, 426-27.

protection order should be entered so as to “avoid irreparable harm” to her. Ex. 1.<sup>6</sup> The order was explicit. Kim was restrained from keeping Roznowski under surveillance, from contacting her, or being within 500 feet of her residence. *Id.*

Roznowski also completed an LEIS, checking various boxes on the sheet that set forth the following information: (1) Kim had a history of assault; (2) he was living in Roznowski’s home; (3) he did not know that Roznowski was going to be forcing him out of her home; (4) he was likely to react violently when served; and (5) a Korean interpreter would be required. Ex. 1. A copy of the LEIS is in Appendix B. Roznowski felt safe once the order was issued. RP (Washburn): 40.

Roznowski took the order to the City police station that day and asked to have it served. CP 1292. She told the information officers there that she wanted Kim served and removed from the house. *Id.* Roznowski left the police station with the distinct impression that the order would be served and enforced by City police officers. CP 1298. She returned home and wrote an email to her daughters: “I did it. Now to sort it out. They will actually stay here while he gets his stuff out.” Ex. 8. Later that day, she told her daughters that “once served the temp order he’ll be escorted out and can’t call, visit, come near here within 500 feet.” Ex. 9.

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<sup>6</sup> The City neglected to provide the Court the terms of that order in its brief. It is in the Appendix A.

City Police Officer Andrew Hensing arrived unannounced at Roznowski's residence on May 3, 2008. Ex. 1. Officer Hensing admitted at trial that he had not read the petition and order he was about to serve, and he had also failed to read the LEIS that would have alerted him to the volatile nature of the situation and the fact that Kim would likely react violently to being served. RP (Hensing): 8-10.<sup>7</sup> Because he had not read these key documents, Hensing was unaware of Kim's past violent acts, *id.* at 10, the 911 call by Roznowski, *id.* at 11, that Kim might react violently or retaliate against Roznowski, *id.* at 23, 34, or that Kim spoke little English and required a Korean interpreter. *Id.* at 15. Acknowledging that people often appeared to grasp information even if they do not, *id.* at 16, and that the LEIS specifically indicated Kim might need an interpreter, *id.*, Hensing, nevertheless, did not ask Kim if he understood English. *Id.* at 36. Instead, Hensing merely handed the order to Kim, told him he had been served, asked him if he had any questions, went back to his car, and drove away. CP 877-78, 1305. This entire transaction took five minutes

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<sup>7</sup> Officer Hensing's testimony on the degree to which he read the order and the accompanying LEIS varied from his deposition to his summary judgment declaration to his trial testimony. At trial, Hensing claimed he "glanced over" the LEIS, contrary to his deposition testimony in which he said he didn't read it. RP (Hensing): 13-14; CP 1303. His declaration stated he "glanced through" the documents. CP 877. This Court should consider his testimony in a light most favorable to Washburn, that is, that Hensing read neither the LEIS, nor the order.

or less. RP (Hensing): 20-21. Nothing prevented Hensing from staying at the house, *id.* at 32, or escorting Kim from it. *Id.* at 30.

Kim was unaware that with the service of the order, he had to move from Roznowski's house, an important point for a law enforcement officer. *Id.* at 22. In fact, upon service of the order, Kim turned to Roznowski and asked her: "What is this?" *Id.* at 41; RP (Ganley): 123. Hensing was unaware of that question. RP (Hensing): 41.

During his interaction with Kim, Hensing did not explain the order, he did not tell Kim to leave, nor did he wait to see if Kim was planning to leave. *Id.* at 45. He acknowledged that Kim had no idea he was to leave the house. *Id.* at 22. Hensing was aware generally that the court order barred Kim from being within 500 feet of Roznowski's home, but he did not know the house at which he served Kim was Roznowski's. *Id.* at 24-25. Having not read the materials, Hensing did not read a sticky note that referenced Roznowski's address where service occurred; he was unaware Kim and Roznowski were cohabitants. *Id.* at 25-26.

Hensing's treatment of Roznowski was equally troubling. He saw a person in the background at the house while he was effecting service on Kim. *Id.* at 39. He did not know if it was Roznowski, *id.* at 40, but he had no contact with her and made no effort to contact her or ascertain her

identity. *Id.* at 40, 46. Hensing made no efforts after Kim's service to contact Roznowski. *Id.* at 24.

Hensing acknowledged that he had a duty to enforce a court order, *id.* at 47, 83-84, but took no steps to enforce it. *Id.* at 43. When he left the house, Kim was in violation of the order. *Id.* at 43-44.

Subsequent to Roznowski's death, Hensing took the unusual step of preparing a supplemental report to explain his actions. *Id.* at 62-64. The jury was advised that according to that report, Hensing allegedly told Kim to "comply with the order fully and leave the premises." *Id.* at 64.<sup>8</sup>

In a May 3, 2008, 9:07 a.m. email to her daughter, Carola Washburn, Roznowski wrote: "Well – he was served this morning. He doesn't understand a thing... Told him I won't discuss anymore, he needs to go... I gave him until 11 to move stuff." Ex. 50 at 243.

Kim was extremely upset upon being served, realizing that the relationship was over, CP 322-23. He asked Roznowski for additional time to move his belongings; Roznowski agreed. CP 323; Ex. 50 at 243.

Kim called his friend, Chong Ko, who subsequently met with Kim at Roznowski's home. RP (Ko): 5. Kim handed Ko a plastic bag containing personal items that Kim asked Ko to give to his nephew. CP 69, 313-14, 1003-04. Ko saw Roznowski. *Id.* Ko accompanied Kim to a

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<sup>8</sup> Hensing's report cannot be reconciled with his testimony that he did not know whose house he was at when he served the order. *Id.* at 25, 43.

local bank where he withdrew money, and asked Ko, to deliver the money to Kim's nephew. RP (Ko): 10-11; CP 69-70, 312-13. Kim also made statements that indicated he was about to kill Roznowski and commit suicide. CP 70, 321. Concerned by his interactions with Kim, Ko tried to take steps to aid Kim.<sup>9</sup>

The Kos called Roznowski's residence, but there was no answer. RP (Ko): 14. In the meanwhile, Kim returned to Roznowski's home. CP 315-16. They argued about money. CP 316-19. She told him to leave. CP 341. Kim snapped and stabbed Roznowski. CP 324.<sup>10</sup> When fire fighters finally arrived at Roznowski's home, they discovered Roznowski had been repeatedly stabbed just prior to their arrival. RP (Lowen): 4-5. Roznowski was dead less than four hours after Officer Hensing had served

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<sup>9</sup> The trial court excluded evidence of Mr. Ko's call to a Federal Way Assistant Chief Andy Hwang. CP 572. Ko called Hwang to relay his concerns about Kim. CP 1017-18. He decided to call Hwang instead of dialing 911 because Hwang is a Korean-American police officer who was a recognized liaison between the local Korean community and City Police Department. CP 1018-19. Hwang received the call and quickly ascertained that the Kos were calling to report a DV murder-suicide in progress. CP 902. Hwang was on his way to a lunch with his wife and testified he was not "in police mood." CP 934. Instead of responding, Hwang actually downplayed the situation by telling Mrs. Ko that "you know people make statements like this." CP 930. Hwang then added further confusion and delay by directing Mrs. Ko to dial 911 and to request a "welfare check," as opposed to reporting an ongoing murder suicide. CP 935.

<sup>10</sup> As Dr. Donald Reay, King County's former medical examiner, testified, Kim's crime was particularly brutal. Kim stabbed Roznowski 18 times. RP (Reay): 9. Roznowski tried to defend herself. *Id.* at 10. The crime scene was bloody. *Id.* at 15-17. She was conscious for five to ten minutes and she likely lived up to twenty minutes after the assault commenced and was fully aware of the events. *Id.* at 20, 26; CP 332.

the protection order and driven away. *Id.* at 7-8. Kim tried to kill himself as well, but survived his suicide attempt. CP 329-31; RP (Lowen): 18-19.

Roznowski's Estate and her two daughters filed the present action in King County Superior Court on May 14, 2009 alleging negligence, gross negligence, negligent infliction of emotional distress, and negligent supervision and training against the City, seeking damages to the Estate for Roznowski's death, and loss of parental consortium claims for her daughters, Janet Loh and Carola Washburn. CP 796-809. The case was assigned to the Honorable Andrea Darvas.

In April, 2010, the City moved for summary judgment on the basis of the public duty doctrine, CP 817-40, but the trial court denied the motion on August 13, 2010. CP 1736-38. The City moved for reconsideration, or alternatively to certify the court's August 13, 2010 order to this Court pursuant to RAP 2.3(b)(4). CP 1739-50. The trial court denied that motion in an extensive order dated September 8, 2010. CP 17-26. *See* Appendix C. The City filed a notice for discretionary review with respect to the summary judgment order and the order on reconsideration. CP 27-43. Commissioner James Verellen denied the City's motion for discretionary review. CP 751-52. The City also moved

to modify the Commissioner's ruling, which this Court denied. CP 750.<sup>11</sup> Prior to Commissioner Verellen's ruling, the City filed a second summary judgment motion largely repetitious of its earlier motion. CP 44-67. This motion was again denied by the trial court on October 15, 2010, CP 571-73, although the court dismissed any claims pertaining to the conduct of Federal Way's Chief Hwang. CP 572.

In the course of trial, the City filed a motion under CR 50(a) for judgment as a matter of law, CP 2049-59, which the trial court apparently denied. CP 2096.<sup>12</sup> After a lengthy trial, the jury returned a \$1.1 million verdict in Washburn's favor. CP 728-29. The trial court entered a judgment on the jury's verdict on December 22, 2010. CP 2089-94.

The City appealed from that judgment. CP 2095-2145. Washburn filed a CR 59 motion for additur or a new trial because, although the jury found the City liable as to Roznowski's two daughters, the jury awarded zero non-economic damages to them. The trial court granted the

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<sup>11</sup> The City clings desperately to this Court's Commissioner's ruling in denying the City's motion for discretionary review under RAP 2.3(b) as if it were precedential. It is not. First, the Commissioner *denied review*, observing that there was no obvious or probable error in the trial court's summary judgment ruling. RAP 2.3(b)(1-2). Moreover, a Commissioner's ruling is not precedential in any event. It is not a published opinion that may not be cited as precedent. GR 14.1. It is subject to de novo review by the Court. RAP 17.7; *State v. Rolax*, 104 Wn.2d 129, 133, 702 P.2d 1185 (1985). Plainly, the City lacks authority for its meritless argument and finds some comfort instead in a non-precedential ruling that determined its public duty doctrine argument was baseless.

<sup>12</sup> The City did not renew that motion post-trial under CR 50(b).

daughters a new trial on damages. CP 2146-50. *See* Appendix D. The City appealed from that order to this Court. CP 2151-58.

#### D. SUMMARY OF ARGUMENT

The only issues raised by the City are duty and the trial court's decision awarding a new trial to Roznowski's daughters. The City *concedes* that the jury was properly instructed on the law, the trial court's evidentiary rulings were correct, and that the damage award to the Estate was correct.

The trial court correctly determined that the City owed a duty of care to Roznowski under traditional tort principles. Accordingly, the public duty doctrine, if viable at all, was not implicated here, in particular, because the City negligently handled its statutory responsibilities under RCW 10.14.<sup>13</sup>

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<sup>13</sup> The City's conduct here was in sharp contrast with its mission statement.

The Federal Way Police Department strives to serve the community by taking a stand against crime through proactive enforcement, innovative methods of protection, and continuous education. We are committed to forward thinking through the evaluation of current practices and the impacts created within the organization, the criminal justice system, and the community. We expect individuals to act with integrity and be accountable for their successes and failures. We will be lead by our dedication to high standards, effective communication, dependable and resilient teamwork, and thoughtful respect for our diverse community as we learn to grow as professionals and as an esteemed police agency.

Ex. 12.

Even if the public duty doctrine applied, which it does not, the City owed Roznowski a duty because its conduct fell within the many exceptions to that doctrine recognized in case law.

Finally, the trial court did not abuse its discretion when it awarded a new trial to Roznowski's two daughters where the jury found the City negligent and the proximate cause of injury to the daughters, but awarded them no damages. Damages for loss of parental consortium are recoverable in Washington law. There was ample testimony documenting the injury to their mother-daughter relationship occasioned by Roznowski's wrongful death.

#### E. ARGUMENT

The central focus of the City's brief is that the public duty doctrine applies, barring the Estate's negligence claims against it. Br. of Appellant at 26-46. The trial court, however, correctly ruled that the City owed a duty of care to Roznowski. While a duty issue is usually reviewed de novo by this Court as it is a question of law, *Folsom v. Burger King*, 135 Wn.2d 658, 671, 958 P.2d 301 (1998), this issue is actually before the Court on review of the trial court's decision to deny judgment as a matter of law under CR 50. It is not, however, clear that the City has properly preserved any error for review by this Court.

First, the City has not assigned error to the trial court's instructions on the duty owed by the City. Br. of Appellant at 3. Indeed, the City did not even bother to provide the trial court's instructions nor the objections thereto by the parties as part of the record on appeal.<sup>14</sup> Nor did the City assign error to the judgment on the verdict of the jury. Br. of Appellant at 3.

Second, the City filed a CR 50(a) motion for a judgment as a matter of law during the trial, CP 2049-59, which the trial court orally denied, CP 2095, but it did not file either a CR 50(b) motion for judgment as a matter of law post-trial, or a CR 59 motion for a new trial.

It is a long-standing rule in Washington that where a trial court denies summary judgment due to factual disputes, and a trial ensues, the losing party, like the City here, must appeal from the sufficiency of the evidence *at trial*, and not from denial of the motion for summary judgment. *Adcox v. Children's Orthopedic Hosp. & Med. Ctr.*, 123 Wn.2d 15, 35 n.9, 864 P.2d 921 (1993); *Johnson v. Rothstein*, 52 Wn. App. 303, 759 P.2d 471 (1988).<sup>15</sup> The *Johnson* court dismissed an appeal that only

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<sup>14</sup> In the absence of any assignments of error to those instructions, they are now the law of the case. RAP 10.3(g); *Guijosa v. Wal-Mart Stores, Inc.*, 144 Wn.2d 907, 917, 32 P.3d 250 (2001) (failure to object to instruction); *Chelan County Deputy Sheriffs' Ass'n v. Chelan County*, 109 Wn.2d 282, 300 n.10, 745 P.2d 1 (1982) (failure to assign error to instruction).

<sup>15</sup> A trial court properly denies the CR 50 motion if there is substantial evidence and reasonable inferences from that evidence to sustain the jury's verdict; this Court

raised the denial of summary judgment where the denial was based on questions of fact resolved at trial. In effect, the denial of summary judgment merges into the judgment on the verdict of the jury. But the City has not assigned error to the sufficiency of the evidence and cannot do so at this late date. Thus, the City's extensive argument of the facts below is particularly inappropriate, leading the reader to believe that the City hopes to persuade the Court *sub rosa* that insufficient evidence supported the jury's verdict. That is not so.

The *Johnson* court reserved the issue of whether review of the denial of a substantive legal issue is also foreclosed by an ensuing trial. *Id.* at 305. This Court has since concluded that if the parties dispute no issues of fact and the summary judgment issue rested solely on a substantive issue of law, the Court will, nevertheless, review that substantive legal issue de novo. *Kaplan v. Northwestern Mut. Life Ins. Co.*, 115 Wn. App. 791, 799-800, 65 P.3d 16 (2003), *review denied*, 151 Wn.2d 1037 (2004).

However, the *Kaplan* court did not have the benefit of recent decisions of the United States Supreme Court construing the federal

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reviews that decision de novo. *Bishop of Victoria Corp. Sole v. Corporate Business Park LLC*, 138 Wn. App. 443, 453, 158 P.3d 1183 (2007), *review denied*, 163 Wn.2d 1013 (2008). Thus, Washburn has drawn upon factual material both adduced on summary judgment and at trial in discussing the facts before this Court.

counterparts to CR 50.<sup>16</sup> In *Unitherm Food Systems, Inc. v. Swift-Eckrich, Inc.*, 546 U.S. 394, 126 S. Ct. 980, 163 L.Ed.2d 974 (2006), the United States Supreme Court held that the failure of a party to file a post-trial motion for judgment as a matter of law under Fed. R. Civ. Pro. 50(b) to challenge the sufficiency of the evidence supporting the jury’s verdict foreclosed appellate review even though the party had filed a prejudgment motion for judgment as a matter under Rule 50(a). The Court extended that rule in *Ortiz v. Jordan*, \_\_\_ U.S. \_\_\_, 131 S. Ct. 884, 178 L.Ed.2d 703 (2011). There, defendants in a case under 42 U.S.C. § 1983 contended they were entitled to qualified immunity on summary judgment, but the district court denied their motion. They did not renew their motion under Fed. R. Civ. Pro. 50(b) post-trial. The Court held that the defense did not vanish, but it had to be evaluated in light of the character and quality of the evidence received at trial; the trial record, in effect, supersedes the summary judgment record. *Id.* at 889. The Court ruled that because qualified immunity of officials was not a “neat abstract issue of law,” the jury’s verdict had to stand, notwithstanding the qualified immunity defense. *Id.* at 893.

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<sup>16</sup> Because our state civil rules are based on federal rules, federal rules decisions are persuasive authority for construction of the state rules. *Sanderson v. University Village*, 98 Wn. App. 403, 410 n.10, 989 P.2d 587 (1999).

Here, as in *Ortiz*, the public duty doctrine or its exceptions do not constitute a “neat abstract issue of law.” The trial court wanted to hear evidence on the doctrine. CP 25. The City did not properly preserve any alleged error for review when it failed to assign error to the trial court’s instructions or judgment on the jury’s verdict and neglected to file a CR 50(b) motion.

(1) The Public Duty Doctrine

At its core, the City misunderstands the public duty doctrine, equating it with immunity. As interpreted by the City, it is nothing more than a backdoor device to restore sovereign immunity despite legislative actions to abolish that immunity.<sup>17</sup> The doctrine has been criticized by jurists and scholars alike. *J&B Development Co. v. King County*, 100 Wn.2d 299, 311, 669 P.2d 468 (1983) (Utter, J., concurring); Jenifer Kay Marcus, *Washington’s Special Relationship Exception to the Public Duty Doctrine*, 64 Wash. L. Rev. 401, 414-17 (1989).

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<sup>17</sup> “The doctrine of governmental immunity springs from the archaic concept that ‘The King Can Do No Wrong.’” *Kelso v. City of Tacoma*, 63 Wn.2d 913, 914, 390 P.2d 2 (1964). In 1961, the Legislature enacted RCW 4.92.090 abolishing state sovereign immunity. That waiver quickly extended to municipalities in 1967. RCW 4.96.010; *Kelso*, 63 Wn.2d at 918-19; *Hosea v. City of Seattle*, 64 Wn.2d 678, 681, 393 P.2d 967 (1964). Local governments have since been “liable for damages arising out of their tortious conduct ... to the same extent as if they were a private person or corporation.” RCW 4.96.010. These statutes operate to make state and local government “presumptively liable in all instances in which the Legislature has *not* indicated otherwise.” *Savage v. State*, 127 Wn.2d 434, 445, 899 P.2d 1270 (1995) (emphasis in original).

The doctrine “began its useful life as a tool to assist courts in determining the intent of legislative bodies when interpreting statutes and codes.” *Cummins v. Lewis County*, 156 Wn.2d 844, 863, 133 P.3d 458 (2006) (Chambers, J. concurring). If a court determined that the Legislature “intended to protect certain individuals or a class of individuals to which the plaintiff belonged,” a duty to that plaintiff attached. *Id.* at 864.

The public duty doctrine analysis is not triggered simply because the defendant happens to be a public entity. *Id.* It is not an immunity: “The public duty doctrine does not serve to bar a suit in negligence against a government entity.” *Cummins*, 156 Wn.2d at 853. Rather, it is an analytical tool designed to determine if a traditional tort duty of care, the threshold determination in a negligence action, is owed. *Babcock v. Mason County Fire Dist. No. 6*, 144 Wn.2d 774, 784-85, 30 P.3d 1261 (2001).<sup>18</sup>

The public duty doctrine simply reminds us that a public entity—like any other defendant—is liable for negligence only if it has a statutory or common law duty of care. And its “exceptions” indicate when a statutory or common law duty exists. The question whether an exception to the public duty doctrine applies is thus another way of asking whether the State had a duty to the plaintiff.

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<sup>18</sup> A court must determine if the government owed a specific duty to a particular individual, the breach of which is actionable, or merely a duty to the “nebulous public,” the breach of which is not actionable. *Osborn v. Mason County*, 157 Wn.2d 18, 27, 134 P.3d 197 (2006).

*Osborn*, 157 Wn.2d at 27-28 (internal quotations omitted).

(2) This Case Does Not Implicate the Public Duty Doctrine

Washburn’s claims in this case are based on common law negligence—the City’s negligent acts and omissions occurring at Roznowski’s residence. The claims are based on a failure to act with reasonable care during the service of a protection order. *See, e.g., Keller v. City of Spokane*, 146 Wn.2d 237, 243, 44 P.3d 845 (2002) (“The municipality, as an individual, is held to a general duty of care, that of a ‘reasonable person under the circumstances.’”).

The trial court here was correct that the public duty doctrine is inapplicable when the duty of the government is based on the actions of its officials; that court properly instructed the jury on the City’s duty in Instruction Number 12.<sup>19</sup> The public duty doctrine analysis only applies when an individual brings a cause of action against law enforcement officials *for failure to act*; “if the officers *do* act, they have a duty to act with reasonable care,” and the public duty doctrine does not bar claims for

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<sup>19</sup> The jury was properly instructed there: “A city police department has a duty to exercise ordinary care in the service and enforcement of court orders.” CP 2179. The jury found the City negligent in accordance with that duty. CP 728. Ample testimony by declaration, deposition, or at trial from Karil Klingbeil, the former director of the Harborview Sexual Assault Center, former Bellevue Police Chief Donald Van Blaricom, former Seattle Police Chief Norman Stamper, and Dr. Ann Ganley established the City’s breach of its duty that resulted in Roznowski’s death. This Court need go no further in its analysis.

negligence.<sup>20</sup> *Coffel v. Clallam County*, 47 Wn. App. 397, 403-04, 735 P.2d 686, *review denied*, 108 Wn.2d 1014 (1987) (emphasis added). The voluntary assumption of a duty through affirmative conduct gives rise to liability if the actor does not use reasonable care. *See Restatement (Second) of Torts* § 323; *Sado v. City of Spokane*, 22 Wn. App. 298, 301, 588 P.2d 1231, *review denied*, 92 Wn.2d 1005 (1979); *Brown v. MacPherson's, Inc.*, 86 Wn.2d 293, 299, 545 P.2d 13 (1975).<sup>21</sup>

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<sup>20</sup> The difference between a *failure to act* (nonfeasance) and a negligent omission (misfeasance) is aptly described by Justice Cardozo in the landmark opinion of *H.R. Moch Co. v. Rensselaer Water Co.*, 247 N.Y. 160, 159 N.E. 896 (1928).

It is ancient learning that one who assumes to act, even though gratuitously, may thereby become subject to the duty of acting carefully, if he acts at all. ... The hand once set to a task may not always be withdrawn with impunity though liability would fail if it had never been applied at all. A time-honored formula often phrases the distinction as one between misfeasance and nonfeasance. ... If conduct has gone forward to such a stage that in action would commonly result, not negatively merely in withholding a benefit, but positively or actively in working an injury, there exists a relation out of which arises a duty to go forward. So the surgeon who operates without pay is liable, though his negligence is in the omission to sterilize his instruments; the engineer, though his fault is in the failure to shut off steam; the maker of automobiles, at the suit of someone other than the buyer, though his negligence is merely in inadequate inspection. The query always is whether the putative wrongdoer has advanced to such a point as to have launched a force or instrument of harm, or has stopped where inaction is at most a refusal to become an instrument for good.

*Id.* at 167-69 (citations and quotations omitted).

<sup>21</sup> The City contends that Washburn is raising this issue for the first time on appeal. Br. of Appellant at 37. This is untrue. The issue was squarely raised in plaintiff's trial brief. CP 637-38.

Thus, while a general claim for failure to provide adequate police services (nonfeasance) might arguably be the proper subject of a challenge under the “public duty doctrine,” claims arising from the negligent *actions* of police officers (misfeasance or malfeasance) do not implicate the public duty doctrine and are not properly analyzed under its framework. *See Coffel*, 47 Wn. App. at 403; *see also, Osborn*, 157 Wn.2d at 27. An individual has a duty to act with reasonable care when he or she *does* act, and this remains true without regard to the actor’s status as a public employee. Cases involving *active* negligence, or misfeasance, do not implicate the public duty doctrine; exceptions to the public duty doctrine are not even relevant.

In *Coffel*, for example, a number of local police officers and sheriff’s deputies responded to two different break-ins at the plaintiffs’ place of business (both resulting from an ownership dispute). The day after the first break-in, the responding deputy told the plaintiff that the matter was “strictly a civil case, and that he ‘didn’t want to hear any more about it.’” 47 Wn. App. at 399. That evening, other officers responded to a second call and found that the perpetrator had returned and was destroying the premises. *Id.* Those officers “took no action to prevent the destruction” and, instead, told the property owners *they* had to leave. *Id.* at 399-400. In reversing summary judgment as to those officers and

Clallam County, the appellate court rejected the suggestion that the public duty doctrine applied to the claims against them:

The doctrine provides only that an individual has no cause of action against law enforcement officials for failure to act. Certainly if the officers do act, they have a duty to act with reasonable care.

*Id.* at 403.

In this Court's recent decision in *Robb v. City of Seattle*, 159 Wn. App. 133, 245 P.3d 242 (2010), a case for which the City has no real answer (br. of appellant at 38-43), the Court held that the City was liable for the shotgun slaying of Michael Robb at the hands of Samson Berhe, a man with a history of serious mental health problems. Berhe had twice been taken to Harborview Hospital for mental evaluations due to "erratic and destructive behavior." When Berhe again exhibited bizarre, aggressive behaviors, Seattle Police officers were repeatedly called by Berhe's parents and neighbors or advised by other law enforcement agencies of Berhe's conduct. After reports of Berhe's involvement in a burglary, two Seattle officers located Berhe and his confederate, and stopped them on suspicion of burglary. From that stop and prior events, the officers should have known Berhe was armed with a shotgun. Berhe finally shot Michael Robb about two hours later at a location near Berhe's home. *Id.* at 137-38.

The trial court denied the City's motion for summary judgment on the basis of the public duty doctrine, even though none of the exceptions to the public duty doctrine applied. This Court affirmed, citing *Parrilla v. King County*, 138 Wn. App. 427, 157 P.3d 879 (2007), a case based on § 302B of the *Restatement (Second) of Torts* in which a Metro bus driver left a bus running with keys in the ignition and the bus was seized by an occupant high on PCP. This Court reasoned that this was an affirmative act, outside the scope of the public duty doctrine after *Coffel*. Citing *Coffel* and § 302B the Court noted that if the officers do act, they have a duty to act with reasonable care. *Robb*, 159 Wn. App. at 146-47.

The City seems to argue that Kim's conduct was not foreseeable as the basis for distinguishing *Robb* and *Parrilla*. Br. of Appellant at 37-46. Of course, such foreseeability is a question of fact, *M. H. v. Corporation of the Catholic Archbishop of Seattle*, \_\_\_ Wn. App. \_\_\_, 252 P.3d 914, 919 (2011). Ample testimony documented that Kim's conduct was foreseeable given his past behavior. Dr. Ann Ganley succinctly noted that "prevention of domestic violence is murder prevention." RP (Ganley): 45. *See also*, CP 419, 429. Even the City's expert, Sergeant Ovens, testified that if an officer failed to enforce an anti-harassment order, someone could get killed. RP (Ovens): 69.

In sum, like *Robb* and *Coffel*, this is an affirmative acts case. The City's officers undertook service on Kim. In undertaking such service, they acted negligently; they were oblivious to their obligation to enforce the court's harassment prevention order in no small part because they had not read it. That negligence resulted in Roznowski's tragic, and avoidable, death, as the jury concluded. The public duty doctrine simply did not apply here.

(3) Even if the Public Duty Doctrine Applies Here, the Exceptions to that Doctrine Control

Even if the public duty doctrine were to apply in this case, there are at least four exceptions to the public duty doctrine: (1) legislative intent, (2) failure to enforce, (3) special relationship, and (4) rescue doctrine. *Bailey v. Town of Forks*, 108 Wn.2d 262, 268, 737 P.2d 1257 (1987). These exceptions have "virtually consumed the rule," *id.* at 267. The "public duty doctrine" does not apply if *any* of the four "exceptions" are in play. The first three of those exceptions apply here.

(a) Failure to Enforce Exception

The City argues in its brief at 27-31 that the failure to enforce exception to the public duty doctrine does not apply. It is wrong. That exception applies where "governmental agents responsible for enforcing statutory requirements possess actual knowledge of a statutory violation"

and “fail to take corrective action despite a statutory duty to do so[.]” *Bailey*, 108 Wn.2d at 268; *Campbell v. City of Bellevue*, 85 Wn.2d 1, 13, 530 P.2d 234 (1975).<sup>22</sup> The classic case is *Bailey*. There, a police officer knew the driver of a vehicle was drunk, but failed to arrest him. The officer is not required to realize a crime is being committed to trigger liability; “knowledge of facts constituting the statutory violation, rather than knowledge of the statutory violation itself, is all that is required.” *Coffel*, 58 Wn. App. at 523.

This exception to the public duty doctrine has been applied in the context of RCW 10.99. *Donaldson v. City of Seattle*, 65 Wn. App. 661, 831 P.2d 1098 (1992), *review dismissed*, 120 Wn.2d 1031 (1993); *Rodriguez v. Perez*, 99 Wn. App. 439, 994 P.2d 874, *review denied*, 141 Wn.2d 1020 (2000). In *Roy v. City of Everett*, 118 Wn.2d 352, 823 P.2d 1084 (1992), the Supreme Court declined to apply the immunity afforded police officers for good faith enforcement of RCW 10.99.070. The Court

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<sup>22</sup> The public duty doctrine was first discussed in Washington in *Campbell*. There, a city inspector failed to disconnect a nonconforming lighting system running under a local stream, a failure which later resulted in the electrocution of the plaintiff downstream. 85 Wn.2d at 2-6. On appeal, Bellevue argued that its enactment of “electrical safety regulations and provisions for inspection and enforcement” gave rise only to a “broad general responsibility to the public at large rather than to individual members of the public.” *Id.* at 9. Our Supreme Court applied the public duty doctrine as developed in New York cases, but it went on to hold that liability would be imposed “where a relationship exists or has developed between an injured plaintiff and agents of the municipality creating a duty to perform a mandated act for the benefit of particular persons or class of persons.” *Id.* at 10 (emphasis added). The *Campbell* court affirmed liability as to the city, noting that the Bellevue inspector had knowledge of this particular nonconforming wiring system and the danger it posed to nearby residents. *Id.* at 13.

held that the plaintiffs stated a cause of action for a year-long failure of the Everett Police Department to enforce the law and to protect the plaintiff and her daughter from their abuser's "reign of terror," where the officers knew of the abuser's conduct. 118 Wn.2d at 354.

The City's core argument is that Officer Hensing was entitled to ignore the terms of the court's harassment prevention order.<sup>23</sup> Indeed, he was entitled to choose to not even read it. Officer Hensing must be held to know the contents of the very papers he was serving on Kim. Had he merely read them and the accompanying information sheet *intended for law enforcement officers*, he would have known Kim had no business being within 500 feet of Roznowski's home or anywhere near her. Kim was in violation of the court's order when Hensing saw him at Roznowski's residence. RP (Van Blaricom 12/13/10): 30.

The duty of police officers with respect to an anti-harassment order under RCW 10.14 is clear.<sup>24</sup> The officers must serve the order, RCW

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<sup>23</sup> As noted *supra*, the City does not favor the Court with the language of the order.

<sup>24</sup> Hensing's duty under RCW 10.99 is equally unambiguous. "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." RCW 10.99.030(5). More specifically:

A peace officer in this state shall enforce an order issued by any court in this state restricting a defendant's ability to have contact with a victim by arresting and taking the defendant into custody, pending release on bail, personal recognizance, or court order, when the officer

10.14.100(2), and cause the order to be entered in the law enforcement criminal intelligence data base. RCW 10.14.110(1). Violation of the order is a gross misdemeanor, RCW 10.14.170, for which the harasser can be arrested. RCW 10.14.120. *See generally, Trummel v. Mitchell*, 156 Wn.2d 653, 131 P.3d 305 (2006) (court partially upholds anti-harassment order by administrator of senior housing facility against resident); *Emmerson v. Weilep*, 126 Wn. App. 930, 110 P.3d 214, *review denied*, 155 Wn.2d 1026 (2005) (harassment of City code enforcement officer); *Ledgerwood v. Lansdowne*, 120 Wn. App. 414, 85 P.3d 950 (2004) (landowner harassment of cattle rancher).

As the plaintiffs' witnesses repeatedly testified, an order under RCW 10.14 is a form of DV order; RCW 10.14 does not create a "second class" order. RP (Van Blaricom 12/9/10): 17-18; RP (Van Blaricom 12/13/10): 36, 43-47; RP (Stamper): 60-61. It was a *court order*. Hensing knew that its violation subjected Kim to arrest and he had to enforce it. RP (Hensing): 83-84. Officer Hensing was obliged to enforce it when Kim violated it in his presence. RCW 10.31.100(8). His failure to enforce the order resulted in Kim's return to Roznowski's home and her death.

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has probable cause to believe that the defendant has violated the terms of that order.

RCW 10.99.055.

The trial court here properly rejected the City's fixation on the mandatory arrest feature of RCW 10.99, as opposed to the discretionary arrest feature of RCW 10.14 for violation of an harassment prevention order. Orders under RCW 10.14 are not a second class of court orders to be ignored by the police:

While Officer Hensing may not have been statutorily obligated to **arrest** Kim for Kim's violation of the Order of Protection after he was served in Roznowski's home, this does not lead to the conclusion that Hensing had no duty to enforce the Order of Protection. On the contrary, it is axiomatic that police have a duty to enforce court orders. Court orders would be meaningless if the police were free to treat them as optional.

CP 23 (Court's bold).

Despite his duty under the law, Officer Hensing left Roznowski's home knowing that Kim remained in the residence in violation of the terms of the order that he had just been served.

In sum, this is not like the cases where the enforcement officer lacked knowledge of a statutory violation, *Halleran v. Nu West, Inc.*, 123 Wn. App. 701, 98 P.3d 52 (2004), *review denied*, 154 Wn.2d 1005 (2005) or general violations of law were at stake, *McKasson v. State*, 55 Wn. App. 18, 776 P.2d 971, *review denied*, 113 Wn.2d 1026 (1989). Here, a specific court order, a clear and mandatory directive, was present. The failure to enforce exception applies.

(b) Legislative Intent Exception

The City contends that the legislative intent exception does not apply because RCW 10.14 does not specifically mention a duty to guarantee harassment victims' safety. Br. of Appellant at 31-33. This is inconsistent with its own earlier acknowledgement at 31 that Roznowski "is in the class RCW 10.14 intends to protect." The trial court understood that Roznowski was the intended beneficiary of RCW 10.14.

In this case, Officer Hensing knew he was serving a court order that prohibited Kim from having contact with Roznowski and that prohibited Kim from being within 500 feet of Roznowski's home. He knew that the order was for Roznowski's personal protection—not for the protection of the public at large. Roznowski clearly was within the class of persons that Chapter 10.14 RCW was intended to protect, and that this particular order was intended to protect. Officer Hensing knew that Kim was in violation of the Order of Protection because he served Kim with the Order **in Roznowski's home**. Yet Officer Hensing walked away, leaving Kim in ongoing violation of the Order. Officer Hensing also knew (or should have known) that Roznowski had alleged under oath that Kim was capable of violence. While Officer Hensing may not have had a duty to **arrest** Kim, he nonetheless had a duty to enforce the court order and to make sure that Kim left Roznowski's home.

CP 24 (Court's bold).

The public duty doctrine does not apply where the Legislature has evidenced a clear intent to protect a particular class of persons. *Halvorson v. Dahl*, 89 Wn.2d 673, 676, 574 P.2d 1190 (1978). Where this

“legislative intent” exception applies, a member of the identified class may bring a tort action against the governmental entity for its violation of the statute.<sup>25</sup> An actionable duty will be imposed based on the text of a municipal code, statute, or ordinance “if that code by its terms evidences a clear intent to identify and protect a particular and circumscribed class of persons.” *Halvorson*, 89 Wn.2d at 676. Citing the text of the Seattle Housing code, the *Halvorson* court confirmed that Seattle had an actionable duty, running to “building occupants,” that derived from the local fire codes. *Id.* at 677.

The legislative intent exception has been addressed in a variety of cases involving the statutory duty to investigate and handle reports of child abuse or neglect. Beginning with *Lesley v. Dep’t of Social & Health Services*, 83 Wn. App. 263, 921 P.2d 1066 (1996), *review denied*, 131 Wn.2d 1026 (1997), Washington courts have recognized that children harmed by the government’s failure to protect them from abuse state a cause of action based on RCW 26.44. The courts even recognize a duty

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<sup>25</sup> This exception was well articulated by the *Donaldson* court:

It is well established that a statute which creates a governmental duty to protect particular individuals can be the basis for a negligence action where the statute is violated and the injured party was one of the persons designed to be protected. If the legislation evidences a clear intent to identify a particular and circumscribed class of persons, such persons may bring an action in tort for violation of the statute.

65 Wn. App. at 667-68.

based on that statute to parents wrongfully accused of child abuse. *Tyner v. Dep't of Soc. & Health Services*, 141 Wn.2d 68, 1 P.3d 1148 (2000). But our Supreme Court in its recent decisions has carefully adhered to the statutory language of RCW 26.44 in addressing duty. *See, e.g., Sheikh v. Choe*, 156 Wn.2d 441, 128 P.3d 574 (2006) (State owed no duty to victims of 2 children subject to dependency orders); *Beggs v. Dep't of Soc. & Health Servs.*, 171 Wn.2d 69, 247 P.3d 421 (2011) (cause of action stated under RCW 26.44 against physicians who failed to report child abuse/neglect not precluded by medical malpractice statute, RCW 7.70). The duty owed by the government is circumscribed by the specific language of the statutes at issue.

As it pertains to this case, the Legislature has expressed a clear intent to protect victims of domestic violence and harassment. Roznowski was a victim of domestic violence and harassment, and she was certainly within the class of persons the Legislature intended to protect when enacting RCW 10.14.

In arguing that RCW 10.99, dealing with domestic violence, was not applicable, the City put that statute at issue in this case. The City obtained jury instructions on RCW 10.99, CP 2183-84, consistent with its requested instructions. CP 1978-80. RCW 10.99 was substantially amended in 1984 to provide for no-contact orders in instances where

persons living in the same household engaged in violent conduct. RCW 10.99.010 expressed the intent of the Legislature in enacting such legislation. *See Appendix.* The Legislature even took the unusual step of providing for mandatory arrests where domestic violence was present. RCW 10.99.055.<sup>26</sup> This legislation was highly controversial as the legislative history materials from the Archives of the Office of the Secretary of State document. *See Appendix E.*<sup>27</sup>

In 1987, the Legislature provided a civil remedy for harassment, authorizing an initial ex parte order of protection where a party demonstrated reasonable proof of unlawful harassment of that party by the respondent and that great or irreparable harm would result to the petitioner where the temporary order was not granted. RCW 10.14.080(1). *See also,* Appendix F. A respondent was entitled to a hearing on a more permanent order where the petitioner bore the burden of proving harassment by a preponderance of the evidence. RCW 10.14.080(3). Harassment was defined in RCW 10.14.020(1) as “a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or

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<sup>26</sup> The trial court instructed the jury on DV orders in Instruction Numbers 16-17. CP 2183-84.

<sup>27</sup> In this case, Roznowski may have qualified for an order under RCW 10.99 because she and Kim were in a domestic relationship. RCW 10.99.020(3-4, 8). But RCW 10.14.130 precludes issuance of a no-contact order under RCW 10.14 if RCW 10.99 applies.

is detrimental to such person, and which serves or legitimate or lawful purpose.” The activities of the harasser cannot be isolated events but must be a pattern of behavior over time. RCW 10.14.020(2); RCW 10.14.030. The legislative intent to protect harassment victims was unequivocal. RCW 10.14.010. *See* Appendix.

Violation of that order subjects the harasser to contempt penalties, RCW 10.14.120, and arrest for gross misdemeanor. RCW 10.14.170.<sup>28</sup> Police officers have express authority to effectuate a warrantless arrest of a violator of an harassment prevention order. RCW 10.31.100(8).

RCW 10.14 was intended to benefit Roznowski personally as a prospective victim of domestic violence and/or harassment by Kim. The City wants to argue that anti-harassment orders are somehow less “important” than DV orders, although issued by a court, and a tolerance policy toward harassment is justifiable. It is wrong. For purposes of the duty analysis,<sup>29</sup> the City’s attempt to draw a distinction between the two statutory schemes because of the mandatory arrest feature of RCW 10.99 is unavailing. *Both* statutes were meant to be properly implemented by the

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<sup>28</sup> This discussion is entirely consistent with the trial court’s Instructions Numbers 14-15. CP 2181-82.

<sup>29</sup> Throughout its brief, the City attempts to assert that its officers did not breach the “standard of care” for police officers serving and enforcing anti-harassment orders. But this is not so much a duty issue, a question of law for the court, as it is a jury issue. The jury resolved that issue against the City.

City's police, for Roznowski's benefit. She was clearly in the class of persons for whom the statutes applied.

The City's contention that an harassment prevention order is a second class court order that need not be enforced is inconsistent with the purpose of the anti-harassment statute expressed in RCW 10.14.010, and the legislative history of the enactment.<sup>30</sup> It further defies common sense to believe that the Legislature, that expressed its intent in RCW 10.14.010 to treat harassment protection as "an important governmental objective" and to "prevent all further unwanted contact between the victim and the [harasser]" somehow intended that officers could be as cavalier about serving and enforcing harassment prevention orders as were Federal Way's here. Harassment victims like Roznowski were clearly intended to be protected by the statute.

RCW 10.14 was designed to maximize the protection to the victim, ensure enforcement of the laws, and prevent "all further unwanted contact between the victim and the perpetrator." Given this statutory scheme, the

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<sup>30</sup> A criminal anti-harassment was enacted by the Legislature in 1985. Chap. 288, Laws of 1985. That law is codified in RCW 9A.46. After an incident in the Alki neighborhood of West Seattle in September, 1986 in which Eia Sundby was stalked, harassed, and later stabbed to death by a former Metro bus driver, (*see* Tab Melton, Tad Shannon, *New charge due in murder; weapon found*, W. Seattle Herald, Sept. 18, 1986; Tab Melton, *New charge filed in Beach Drive killing*, W. Seattle Herald, Sept. 25, 1986; Tad Shannon, *Parents Friends seek answers in killing*, W. Seattle Herald, Oct. 9, 1985; Tad Shannon, *Harassment*, W. Seattle Herald, November 13, 1985), civil anti-harassment legislation later codified in RCW 10.14 was introduced and enacted. Chap. 280, Laws of 1987.

Legislature intended to impose a duty on law enforcement (and others) to protect victims of harassment. Just as domestic violence is not subject to the public duty doctrine, *Roy*, 118 Wn.2d at 358; *Donaldson*, 65 Wn. App. at 666-68 (legislature’s intent to protect victims of domestic violence is clear; “public duty doctrine” does not bar negligence claims by victims of domestic violence), the public duty exception for legislative intent applies to harassment victims like Roznowski.

(c) Special Relationship Exception

The City argues in its brief at 33-36 that the special relationship exception does not apply,<sup>31</sup> but it only discusses one aspect of that exception. A duty of care arises where the government defendant and the plaintiff have a special relationship that sets the plaintiff apart from the public in general. *Babcock*, 144 Wn.2d at 786. *See also, Restatement (Second) of Torts* § 315. A sufficient relationship exists wherever (1) there is direct contact between the public official and the injured plaintiff which sets the latter apart from the general public, (2) there are assurances

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<sup>31</sup> Contrary to its argument in the Statement of the Case, br. of appellant at 10 n.5, the special relationship argument has not been abandoned.

given,<sup>32</sup> and (3) the contact gives rise to justifiable reliance on the part of the plaintiff. *Beal for Martinez v. City of Seattle*, 134 Wn.2d 769, 785, 954 P.2d 237 (1998). “As to the second element, the assurances need not always be specifically averred, as some relationships carry the implicit character of assurance.” *Chambers-Castanes v. King County*, 100 Wn.2d 275, 286, 669 P.2d 451 (1983). In rejecting a public duty doctrine defense, this Court stated in *Munich v. Skagit Emergency Communications Center*, 161 Wn. App. 116, 250 P.3d 491 (2011), that the assurance need not be false or inaccurate. A representation by the 911 operator there to the victim that a deputy was “en route” to him was a sufficient assurance to meet the special relationship exception.<sup>33</sup>

This special relationship exception has been explored in a number of cases involving 911 calls. In *Chambers-Castanes*, the first of those cases, our Supreme Court determined there was privity between a caller to the 911 operator and King County where there the call involved assaults in progress and the operator assured one of the victims that police officers would be there shortly. The victims relied on the assurances.

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<sup>32</sup> Whether statements made by 911 operator to victim of beating and rape constituted express assurance is a question of fact. *Noakes v. City of Seattle*, 77 Wn. App. 694, 699-700, 895 P.2d 842, *review denied*, 127 Wn.2d 1021 (1995).

<sup>33</sup> It is noteworthy that this Court in *Munich* distinguished *Vergeson v. Kitsap County*, 145 Wn. App. 526, 186 P.3d 1140 (2008), the Division II case upon which the City so heavily relies. Br. of Appellant at 30, 33.

Subsequently in *Beal*, a victim of domestic violence was murdered by her estranged husband when she went to his apartment to get some of her family's belongings. *Beal*, 134 Wn.2d at 773.<sup>34</sup> Prior to the shooting, the victim had dialed 911, told the operator that her husband was next door, and that he would not let her get her property out of his apartment. *Id.* In response, the operator told her that “we’re going to send somebody there” and “we’ll get the police over there for you okay?” *Id.* at 774. A few minutes later, while the victim was waiting for the police to arrive, her estranged husband shot and killed her. *Id.* In rejecting Seattle’s argument that the public duty doctrine barred the claim, our Supreme Court held that the dispatcher’s statement (“we’re going to send somebody there”) created a special relationship and created a duty to provide police services to the victim. *Id.* at 785-86.

In *Bratton v. Welp*, 145 Wn.2d 572, 39 P.3d 959 (2002), the Supreme Court filed a per curiam opinion reversing a Court of Appeals decision that reversed a trial court that had refused to dismiss a negligence claim based on the public duty doctrine. There, an assault on the plaintiff’s sister and threats to the plaintiff by her mother’s neighbor were reported to a 911 operator. The police assured the plaintiff that the

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<sup>34</sup> Lacking any ability to distinguish the Court’s holding in *Beal*, the City resorts to the cheap trick of citing a *dissent* authored by appellate counsel for the City when he was a Supreme Court justice. Apparently, the City is not aware that a dissent is not precedent for its misguided position here.

neighbor “would be arrested the next time he caused an assurance.” *Id.* at 575. In a subsequent altercation with the neighbor, the family called 911 three times. The neighbor shot the plaintiff three times. The Court noted that privity must be broadly construed: “in cases based on failure by the police to timely respond to requests for assistance, it refers to the relationship between the public entity and a reasonably foreseeable plaintiff.” *Id.* at 577. The Court also held that assurances made to another person that police would be dispatched were sufficient. *Id.*

By contrast, in *Harvey v. County of Snohomish*, 157 Wn.2d 33, 134 P.3d 216 (2006), this Court noted the facts in *Chambers-Castanes*, *Beal*, and *Bratton*, but held that no duty was owed where calls were made to the County’s 911 operator regarding a man who attacked the plaintiff claiming he was on a mission from God. About 15 minutes elapsed between the initial call and the man’s shooting rampage in which he shot the plaintiff six times. The Court carefully scanned the record, holding that there was no assurance made to the plaintiff by the operator who only offered factual statements regarding the status of police activities.

*See also, Torres v. City of Anacortes*, 97 Wn. App. 64, 981 P.2d 891 (1999), *review denied*, 140 Wn.2d 1007 (2000) (court held that response to a domestic violence victim by police with recommendation that she seek a no-contact order and service or order was sufficient to

establish privity, but not enough to create fact question on assurance; question of fact arose as to assurance where police promised to forward information to the prosecutor for a charging decision but failed to do so).

Like the victim in *Beal*, Roznowski contacted the police and received assurances (both express and implied) that an officer would serve the order and remove Kim from her home. The first assurances were made by Officer Parker on April 30, 2008, and employee Gretchen Sund later accepted the order (and the completed LEIS) and agreed to have them served by the City's Police Department. Roznowski's emails confirm these contacts and her reliance on the police. One email stated: "They will actually stay here while he gets his stuff out." Ex. 8. Another said: "[O]nce served the temp order he'll be escorted out and can't call, visit, come near here within 500 feet." Ex. 9. Like the victim in *Beal*, Roznowski was killed when the police failed to follow through and protect her. Roznowski's contacts with FWPD set her apart from the "nebulous public," and this relationship places Roznowski's claims beyond the reach of the public duty doctrine. *Taylor v. Stevens County*, 111 Wn.2d 159, 166, 759 P.2d 447 (1988); *Babcock*, 144 Wn.2d at 786.

A second type of "special relationship" case is present in Washington where the government agency has a special relationship *with a third person* who causes injury to the plaintiff. The public duty doctrine

does not apply where “a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person’s conduct.” *Restatement (Second) of Torts* § 315. See *Caulfield v. Kitsap County*, 108 Wn. App. 242, 29 P.3d 738 (2001) (county undertook in-home care of MS patient and was liable when caregiver county provided was negligent in providing care). There are numerous examples of such a special relationship in case law. See, e.g., *Petersen v. State*, 100 Wn.2d 421, 426, 671 P.2d 230 (1983) (State had special relationship with patient recently released from Western State Hospital); *Taggart v. State*, 118 Wn.2d 195, 218 n.4, 822 P.2d 243 (1992) (supervised offender assaulted plaintiff); *Hertog, ex rel. S.A.H. v. City of Seattle*, 138 Wn.2d 265, 979 P.2d 400 (1999) (offender under supervision of city probation officers and county pre-release counselors raped 6-year-old child); *Joyce v. Dep’t of Corrs.*, 155 Wn.2d 306, 119 P.3d 825 (2005) (offender under DOC community supervision killed motorist while driving a stolen vehicle); *Gregoire v. City of Oak Harbor*, 170 Wn.2d 628, 244 P.3d 924 (2010) (jail had duty to protect inmate).

In *Estate of Jones v. State*, 107 Wn. App. 510, 15 P.3d 180 (2000), *review denied*, 145 Wn.2d 1025 (2002), this Court held that the State had a duty to the murder victim of a juvenile offender who escaped from a group care facility for juveniles. The juvenile offender had a history of parole

violations that should have disqualified him from placement in a group care facility. *See also, Estate of Bordon ex rel. Anderson v. Dep't of Corrs.*, 122 Wn. App. 227, 95 P.3d 764 (2004), *review denied*, 154 Wn.2d 1003 (2005).

Here, the anti-harassment order specifically directed the City to restrain Kim from coming into contact with Roznowski. The City had a *court-ordered responsibility with respect to Kim* that takes the case within the special relationship exception. Thus, where the City had an explicit responsibility under the no-contact order issued by the court as to Kim to separate him from Roznowski, but failed to do so, the public duty doctrine is inapplicable. Either aspect of the special relationship exception applies here.

(4) The Trial Court Did Not Abuse Its Discretion as to the Daughters' Claims Where the Jury Found the City Negligent and that Its Negligence Was the Proximate Cause of Harm to the Daughters but Awarded No Damages

The City asserts that the trial court erred in granting the CR 59 motion of Roznowski's daughters where the jury awarded no damages to them. Br. of Appellant at 46-49. The City is wrong because the trial court had discretion to award a new trial under the circumstances present here and that court did not abuse its discretion, as its thoughtful order granting a new trial attests. CP 2146-50.

Washburn and Loh had a cause of action against the City of loss of parental consortium. Washington law has long recognized such a cause of action in tort. *Ueland v. Reynolds Metals Co.*, 103 Wn.2d 131, 134-36, 691 P.2d 190 (1984). Ordinarily, this action is brought as part of the wrongful death action. *Kelley v. Centennial Contractors Enterprises, Inc.*, 169 Wn.2d 381, 236 P.3d 197 (2010).

This Court reviews the order granting a new trial on an abuse of discretion standard of review. “The granting of a new trial on grounds of inadequate damages is peculiarly within the discretion of the trial court,” and the Court’s decision will not be disturbed absent a “manifest abuse of discretion.” *Wooldridge v. Woolett*, 96 Wn.2d 659, 668, 638 P.2d 566 (1981); RCW 4.76.030; CR 59(a)(7).<sup>35</sup> A much stronger showing of abuse of discretion is required to set aside an order *granting* a new trial than an order denying a new trial because the latter concludes the parties’ rights. *Palmer v. Jensen*, 132 Wn.2d 193, 197, 937 P.2d 597 (1997).

The jury here found the City negligent and concluded that its negligence was a proximate cause of Roznowski’s death. CP 728.<sup>36</sup> The jury awarded damages to Roznowski’s estate, but failed to award any

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<sup>35</sup> CR 59(a)(7) and RCW 4.76.030 are in the Appendix.

<sup>36</sup> In Instruction 18, CP 2185, the jury was specifically instructed that the loss of Roznowski’s “love, care, companionship, and guidance” was compensable to the daughters.

damages whatsoever to Carola Washburn and Janet Loh, her two surviving daughters. CP 729. The uncontroverted evidence at trial showed that the daughters had exceptionally strong relationships with their mother and that the loss of their mother's love, care, and companionship, and guidance has been overwhelming and incredibly difficult for both Washburn and Loh. Where substantial evidence supported the jury's findings of negligence, proximate cause, and damages to Roznowski's estate, the jury's finding of zero damages on the daughters' claims was reversible error.

Washburn and Loh presented ample evidence documenting the strength of Roznowski's relationship with her daughters through the testimony of family friend Inga Grayson (RP (Grayson): 7, 8, 11, 14) and daughters Janet Loh (RP (Loh 12/14): 8, 16, (12/15): 2) and Carola Washburn (RP (Washburn): 6, 17, 22, 27). Similarly, there was ample testimony documenting the devastation experienced by the daughters as a consequence of their mother's brutal murder. RP (Grayson): 53; RP (Loh 12/15): 24, 26; RP (Washburn): 47, 50-51. The City never challenged the relationship at any point in the proceedings – not during opening statement, cross-examination, or closing argument.

Our Supreme Court has found that a trial court abuses its discretion if it denies a motion for a new trial where the verdict is plainly

insufficient. *Palmer*, 132 Wn.2d at 198. In *Palmer*, a mother and son were injured in a car accident. At the conclusion of the trial, the jury awarded Palmer and her son \$8,414.89 and \$34 respectively in special damages, but no general damages. After the jury returned its verdict, Palmer moved for an additur or alternatively a new trial pursuant to CR 59(a), arguing the verdict was insufficient because it failed to include general damages. The trial court denied the motion, and the Court of Appeals affirmed, but the Supreme Court reversed and remanded for a new trial on the issue of damages only. The Supreme Court held that “a plaintiff who substantiates her pain and suffering with evidence is entitled to general damages.” *Id.* at 201.

This same issue was addressed by the Court of Appeals in *Fahndrich v. Williams*, 147 Wn. App. 302, 194 P.3d 1005 (2008). There, the plaintiff was involved in two separate automobile accidents, and brought suit against both drivers. The jury found for the plaintiff and awarded special damages against both defendants, but the jury failed to include any non-economic damages and entered “zero” on that portion of the verdict form. The plaintiff moved for a new trial “because the jury awarded only economic damages and no non-economic damages for her pain and suffering.” *Id.* at 305. Because the jury had entered “zero for non-economic damages on its verdict form,” the court limited its review to

the issue of “whether the evidence support[ed] the jury’s failure to award non-economic damages.” *Id.* at 306-07. Observing that the plaintiff had “presented extensive evidence of her pain and suffering” and that the defendants “presented no evidence to contradict it,” the Court of Appeals then remanded for a new trial on the limited issue of damages. *Id.* at 308-09.

Numerous Washington cases have provided that a new trial is necessary where the jury finds for the plaintiff, but then fails to make an award for one or more categories of damages that are not subject to dispute. *See, e.g., Ide v. Stoltenow*, 47 Wn.2d 847, 851, 289 P.2d 1007 (1955) (affirming trial court’s grant of new trial on damages where jury awarded less than \$500 in general damages to victim of automobile collision); *Krivanek v. Fibreboard Corp.*, 72 Wn. App. 632, 636-37, 865 P.2d 527 (1993), *review denied*, 124 Wn.2d 1005 (1994) (reversing trial court and remanding for new trial on damages where jury’s award failed to include adequate compensation for economic loss to surviving spouse of deceased).

The City ignores the foregoing authorities and the trial court’s decision, arguing instead that the issue is one of segregation of harm. The City simply neglects to perceive that the loss of parental consortium here, for which there was ample evidence, is a distinct basis for recovery of

general damages by Washburn and Loh. All of the City's speculation in its brief at 48-49 notwithstanding,<sup>37</sup> *it was found to be negligent by the jury*. For such negligence, Roznowski's daughters were entitled to recover damages for loss of parental consortium based upon the evidence they adduced at trial regarding their relationship with their mother. The trial court was entirely correct in concluding that the jury failed to address such damages.

In sum, the trial court's decision is amply supported in the case law; that court did not abuse its discretion, and its decision should be affirmed.

#### F. CONCLUSION

The City owed Roznowski a duty of care, but breached that duty by the cavalier attitude of its police officers toward a harassment victim. The City's officers were ill-trained on harassment and acted negligently in failing to properly protect Roznowski from Kim. Hensing had not read Roznowski's petition, the court order, or the LEIS designed to afford Roznowski protection. As this is a case involving the City's failure to take affirmative steps, the public duty doctrine is inapplicable for the reasons this Court articulated in *Robb* and *Coffel*. Even if the doctrine applies, its

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<sup>37</sup> The City also seems to complain about the jury verdict form. Br. of Appellant at 49. It has not assigned error to that verdict form, waiving its belated assertion of error in connection with it.

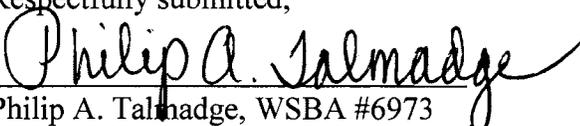
many exceptions control. The public duty doctrine afforded the City no immunity for its negligent and often callous behavior toward an harassment victim.

The trial court properly instructed on the law of negligence and the jury correctly returned a verdict for the Estate. The jury, however, erred in awarding no damages to Roznowski's daughters when it ruled the City was negligent and such negligence was the proximate cause of harm to the daughters.

This Court should affirm the judgment on the verdict of the jury and the trial court's decision to allow a new trial to the daughters on damages. Costs on appeal should be awarded to Washburn.

DATED this 21st day of July, 2011.

Respectfully submitted,

  
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# APPENDIX

CR 59(a)(7):

On the motion of the party aggrieved, a verdict may be vacated and a new trial granted to all or any of the parties, and on all issues, or on some of the issues when such issues are clearly and fairly separable and distinct, ... Such motion may be granted for any one of the following causes materially affecting the substantial rights of such parties:

\* \* \*

(5) Damages so excessive or inadequate as unmistakably to indicate that the verdict must have been the result of passion or prejudice;

\* \* \*

(7) That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law;

\* \* \*

(9) That substantial justice has not been done.

RCW 4.76.030:

If the trial court shall, upon a motion for new trial, find the damages awarded by a jury to be so excessive or inadequate as unmistakably to indicate that the amount thereof must have been the result of passion or prejudice, the trial court may order a new trial or may enter an order providing for a new trial unless the party adversely affected shall consent to a reduction or increase of such verdict, and if such party shall file such consent and the opposite party shall thereafter appeal from the judgment entered, the party who shall have filed such consent shall not be bound thereby, but upon such appeal the court of appeals or the supreme court shall, without the necessity of a formal cross-appeal, review de novo the action of the trial court in requiring such reduction or increase, and there shall be a presumption that the amount of

damages awarded by the verdict of the jury was correct and such amount shall prevail, unless the court of appeals or the supreme court shall find from the record that the damages awarded in such verdict by the jury were so excessive or so inadequate as unmistakably to indicate that the amount of the verdict must have been the result of passion or prejudice.

RCW 10.14.010:

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.

RCW 10.99.010:

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.

A

EXP04

ISSUED

FILED

08 MAY -1 PM 1:53

KING COUNTY  
SUPERIOR COURT CLERK  
KENT, WA

SUPERIOR COURT OF WASHINGTON  
FOR KING COUNTY

08-2-14902-1 KNT

NO. KNT

ISABEL K. ROZMANSKI 9/1/41  
Petitioner DOB  
vs.

TEMPORARY PROTECTION ORDER  
AND NOTICE OF HEARING - AH  
(TMORAH)  
(Clerk's action required)

PAUL KIM 7/7/39  
Respondent DOB

Next Hearing Date MAY 14 2008  
 Time: 8:30 a.m.  
at the Regional Justice Center, 401 Fourth  
Avenue North, Room 3G, Kent, WA 98032

**WARNING TO THE RESPONDENT:** Violation of the provisions of this order with actual notice of its terms is a criminal offense under chapter 10.14 RCW and will subject a violator to arrest. Willful disobedience of the terms of this order may also be contempt of court and subject you to penalties under chapter 7.21 RCW.

- No minors involved.
- Identification of minors (if applicable):

Minor's Name (First, Middle Initial, Last)	Age	Race	Sex

Based upon the petition, testimony, and case record, the court finds that an emergency exists and that a Temporary Order for Protection should be issued without notice to the respondent to avoid irreparable harm. IT IS THEREFORE ORDERED THAT:

Respondent is RESTRAINED from making any attempts to keep under surveillance  petitioner  any minors named in the table above.

Respondent is RESTRAINED from making any attempts to contact  petitioner  any minors named in the table above.

Respondent is RESTRAINED from entering or being within 500 FEET (distance) of petitioner's  residence  workplace  other: \_\_\_\_\_

The address is confidential  Petitioner waives confidentiality of the address which is:

Other: \_\_\_\_\_

The Clerk of the Court shall forward a copy of this order, on or before the next judicial day, to the law enforcement agency where petitioner lives, which shall enter it in the computer-based criminal intelligence system used by law enforcement in this state to list outstanding warrants.

Petitioner lives within the city limits of FEDERAL WAY  
 Petitioner lives outside city limits, in the county of \_\_\_\_\_

SERVICE

Petitioner shall arrange to have respondent personally served with a copy of the petition and this order. Petitioner may choose to use the services of a legal process service, the law enforcement agency having jurisdiction where the respondent resides, or an adult who is not a party to this case. The server shall complete and return to this court proof of service.

The respondent is directed to appear and show cause why the court should not enter an order effective for one year or more, and why the court should not order the relief requested by the petitioner or other relief the court deems proper, which may include payment of costs.

Failure to appear at the hearing or to otherwise respond will result in the court issuing an order for protection pursuant to RCW 10.14 effective for a minimum of one year from the date of the hearing. A copy of this Temporary Protection Order and Notice of Hearing has been filed with the Clerk of the Court.

This Temporary Order for Protection is effective until the next hearing date and time shown below the caption on page one.

DATED 5/1/08 at 1:52 am/pm [Signature]  
JUDGE/COURT COMMISSIONER

Presented by: [Signature] 5/1/08  
Petitioner Date

I acknowledge receipt of a copy of this Order:  
Respondent Date

01  
05  
24  
08

FILED

08 MAY -1 PH 1:13

KING COUNTY  
SUPERIOR COURT CLERK  
KENT, WA

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

BAERBEL K. ROZNOWSKI

Petitioner

vs.

PAUL KIM

Respondent

NO: 08-2-14902-1 KNT

PETITION FOR AN  
ORDER FOR PROTECTION - AH

(PTORAH)

PETITIONER'S AFFIDAVIT

- 1.1 I am petitioning for an Order for Protection against Unlawful Harassment.
- 1.2  I am the victim of unlawful harassment committed by the respondent, as described in the statement below.  
 I am the parent or guardian of child(ren) under age 18 and seek to restrain a person 18 years or over from contact with my child(ren) because contact is detrimental, as described in the statement below.
- 1.3 How do you know the respondent?  neighbor  ex or current roommate  co-worker  
 ex or current spouse  ex or current partner / girlfriend / boyfriend  casual acquaintance  
 relative: \_\_\_\_\_  other: \_\_\_\_\_
- 1.4  The harassment took place in King County.  Respondent lives in King County.
- 1.5 I (or the child I am seeking to protect) have been physically or sexually assaulted, threatened with physical harm, or stalked by the respondent.  No  Yes
- 1.6  No children are involved.  
 I am asking for protection on behalf of the following children:

Child's Name (First, Middle Initial, Last)	Age	Race	Sex	How Related to		Resides With
				Petitioner	Respondent	

1.7 Other court cases or any other protection, restraining or no-contact orders involving me, the respondent and the child(ren) are:

Case Number                      Court Name (Superior/District/Municipal)      Case Title or Parties

1.8 My address for the purpose of receiving service of any legal papers is: 2012 SA 353RD PL  
FEDERAL WAY WA 98023 (NOTE: If you want to keep your residential  
address confidential, list an alternate address where you agree to accept any legal documents.)

**STATEMENT**

*Unlawful harassment* means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or 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 is contact by a person 18 years of age or over that would cause a reasonable parent to fear for the well-being of their child.

*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. Constitutionally protected activities are not included within the meaning of course of conduct.

Describe specific acts of harassment and their approximate dates.

Good Example: "On May 9, 2007, Terry called my house 19 times between 1:00 a.m. and 4:00 a.m. saying that if I didn't come outside to talk, I had better have good fire insurance."

Bad Example: "Terry harassed me."

The respondent has committed acts of unlawful harassment as follows:

Most recent act of harassment and approximate date:

4/30 VERBAL ATTACKS BY PAUL KIM BECAUSE I MOVED  
WOOD TO CLEAN YARD. HE IS VEHEMENT ABOUT OWNING  
THIS PILE OF WOOD ALONG WITH A STACK 10'W X 6'H  
ALONG THE FENCE, AS WELL AS MISC. SUPPLIES ON SIDE OF  
FENCE. I GAVE HIM NOTICE THAT I'LL PLAN TO MOVE  
2 YRS AGO. NOTHING WAS DONE

Prior act(s) of harassment and approximate date:

4/29 VERBAL ATTACKS ABOUT SAME SUBJECT. HE WON'T  
COMMIT WHEN HE'LL REMOVE ITEMS AND PERSONAL  
BELONGINGS IN CRAWL SPACE. I CAN'T PUT HOUSE  
ON MARKET FOR SALE UNTIL DONE. HE DELIBERATELY  
STALLS, AND THE REPEATED ABUSHER IS. IT TAKES  
TIME

(Continue on separate page if necessary.) SEE ATCH.

STATEMENT: (Continued)

PAUL KIM'S RESIDENCE IS AT 331 S 1ST PL. #211, FEDERAL WAY BUT STAYS AT PETITIONER'S HOME. HE HAS VIOLENT VERBAL, INSULTING OUTBURSTS. HE GAMBLER AND USES CASH FROM HIS CREDIT CARD, CURRENTLY APPROX. \$4000, BLAMES PETITIONER BECAUSE I'M TAKING HIM THERE. RECENTLY HE ASKED FAMILY IN KOREA FOR \$2000. WHEN I TOLD HIM I SHARE CASH I CAN AFFORD TO LASE, NOT MORE THAN \$100 FOR US. HE HAS A SON IN AUSTRALIA AND IS TRYING TO CONTACT HIM FOR MONEY. ALL 3 CHILDREN DO NOT WANT ANY CONTACT FOR YEARS. FOR THE SAME REASON I'M FILING FOR PROTECTION.

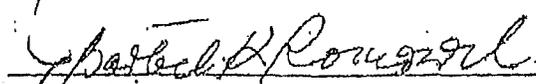
LAST YEAR HIS OUTBURST FRIGHTENED ME, I CALLED 911, HE CAME CLOSE TO HITTING ME. HE LEFT MY PLACE AS PROMISED. WITHIN 15 MIN I RECEIVED SEVERAL CALLS FROM HIM, I CHANGED THE LOCKS EXCEPT FOR ONE DOOR.

HE IS CAPABLE OF PHYSICAL VIOLENCE. I WITNESSED HIM BEATING HIS OLDEST SON IN THE PAST. IN HIS PRESENT STATE OF MIND HE CAN EASILY RETALVATE WITH ME. DUE TO THE DEBT, HE DEMANDS \$9000 FROM ME STATING I STOLE THAT FROM HIM. HIS SON HAD SENT MONEY FOR HIM AND I USED IT WITH PERMISSION TO PAY KIM'S DEBTS IN THE PAST.

(Continue on separate page if necessary).

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

DATED 9/5/10 at Kent Washington.

  
Signature of Petitioner

PETITION FOR ORDER FOR PROTECTION - Statement page      of       
(9/2000) - RCW 26.50.030

PLA 000007

RELIEF REQUESTED

2.1 I request an Order for Protection, following a hearing that will:

- RESTRAIN respondent from making any attempts to keep under surveillance  me  
 the child(ren) named in the table above.
- RESTRAIN respondent from making any attempts to contact, except for mailing of court documents,  me  the child(ren) named in the table above.
- RESTRAIN respondent from entering or being within 500 FEET (distance) of my  residence  workplace  other:  
\_\_\_\_\_  
\_\_\_\_\_

OTHER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2.2  I request that the Order for Protection REMAIN EFFECTIVE longer than one year because respondent is likely to resume acts of unlawful harassment against me if the order expires in a year.

2.3  I request that the respondent be ordered to pay the fees and costs of this action.

Emergency Temporary Order Until the Court Hearing:

2.4  AN EMERGENCY EXISTS as described below and I request a Temporary Order for Protection granting the relief in paragraph 2.1 be issued immediately, without notice to the respondent.

List any immediate and irreparable injury, loss, or damage that would result before the respondent can be served and heard:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

DATED 5/1/08 at RENT, Washington.

Barbara Rose  
Petitioner

SUPERIOR COURT OF WASHINGTON  
FOR KING COUNTY

08-2-14902-1 KNT

BARBELK ROENDOSKI 9/1/41  
Petitioner, DOB

NO. KNT

vs.  
PAUL KIM 7/7/39  
Respondent, DOB

RETURN OF SERVICE  
(Unlawful Harassment)  
(RTS)

1. My name is Andrew Hensing. I am  a peace officer  18 years of age or older and I am not the petitioner or respondent.
2.  I was unable to make personal service on the respondent.  I have notified the petitioner that respondent was not served.  
 I was unable to make personal service on the petitioner.  
Personal service was attempted on the following date(s): \_\_\_\_\_  
No service was attempted because \_\_\_\_\_

3.  I served Paul KIM with the following documents:  
(name of person served)

- |  |   |
|--|---|
| <input type="checkbox"/> Petition for Order for Protection                               | <input type="checkbox"/> Application to Modify/Terminate:                               |
| <input checked="" type="checkbox"/> Temporary Order for Protection and Notice of Hearing | <input type="checkbox"/> Order Modifying/Terminating Terms of Order                     |
| <input type="checkbox"/> Reissnance of Temporary Order for Protection                    | <input type="checkbox"/> Petition for Surrender of Weapon, Notice of Hearing, and Order |
| <input type="checkbox"/> Order for Protection  | <input type="checkbox"/> Order to Surrender Weapon                                      |
| <input type="checkbox"/> Notice of Hearing   | <input type="checkbox"/> _____  |

4. I served these documents on 5-3-08 at 0813 at this address:  
(date) (time)  
2012 SW 353 PL Federal Way.

5. Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

DATED 5-3-08 at Federal Way, Washington.

Fees: Service \_\_\_\_\_  
Mileage \_\_\_\_\_  
Total \_\_\_\_\_

Andrew Hensing  
Signature of Server  
Andrew Hensing  
Print Name  
Federal Way P.D.  
Law Enforcement Agency

**SERVIER:**

Complete and return this form to:

King County Superior Court Clerk  
Regional Justice Center  
401 Fourth Avenue North, Rm 2C  
Kent, Washington 98032-4429

2) Deliver a copy to the law enforcement agency where petitioner lives:

**B**

**LAW ENFORCEMENT INFORMATION**

**Do NOT serve or show this sheet to the restrained person!**  
**Do NOT FILE in the court file. Give this form to law enforcement.**

Type or print clearly! This completed form is required by law enforcement. This information is necessary to serve, enforce and enter your order into the state wide law enforcement computer. Fill in the following information as completely as possible.

King County Superior Court	Case Number: 08-2-14902-1 KNT
<input type="checkbox"/> Domestic Violence	<input type="checkbox"/> Dissolution / Separation / Invalidity / Nonparental Custody / Paternity
<input checked="" type="checkbox"/> Unlawful Harassment	<input type="checkbox"/> Vulnerable Adult <input type="checkbox"/> Sexual Assault

**Restrained Person's Information** (This is the person that you want the court to restrain.)

Name: First: PAUL Middle: Last: RIM Nickname: Relationship to Protected Person: BOY FRIEND
Date of Birth: [Redacted] Sex: <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female Race: KOREAN Height: 5'6" Weight: 168 Eye Color: BROWN Hair Color: GREY Skin Tone: TAN Build: MEDIUM / MUSCULAR
Last Known Address: 231 S 1ST PL #211 FEDERAL WAY WA 98023-2535 State: WA Zip: 98023-2535 Area Code: 206 Phone(s) w/Area Code: 952-7352 Need Interpreter? (Yes or No): <input checked="" type="checkbox"/> No Language: KOREAN
Employer: N/A Employer's Address: N/A WORK Hours: Phone: N/A
Vehicle License Number: 030 SER Vehicle Make and Model: NISSAN OUTLET Vehicle Color: GREEN Vehicle Year: Drivers License or ID number: State:

**Hazard Information** Restrained Person's History Includes:

Mental Health Problems (Commitment, Treatment, Suicide Attempt, Other)  Assault  Assault with Weapons  Alcohol/Drug Abuse

Weapons:  Handguns  Rifles  Knives  Explosives  Other:

Location of Weapons:  Vehicle  On Person  Residence Describe in detail:

**Current Status** (Circle Yes, No or N/A.) Is the restrained person a current or former cohabitant as an intimate partner?  Y  N  
 Are you and the restrained person living together now?  Y  N Does the restrained person know he/she may be moved out of the home?  Y  N / N/A  
 Does the restrained person know you're trying to get this order?  Y  N Is the restrained person likely to react violently when served?  Y  N

**Protected Person's information** (This is the person you want the court to protect.)

Name: First: BAERBEL Middle: KARIN Last: ROZNOWSKI
Date of Birth: 9/1/41 Sex: <input checked="" type="checkbox"/> Female <input type="checkbox"/> Male Race: CAOC Height: 5'4" Weight: 220 Eye Color: BLUE Hair Color: BLOND Skin Tone: FAIR Build: OVERWEIGHT
If your information is <b>not confidential</b> , you must enter your address and phone number(s). Current Address: 2012 SW 358th PL City: FEDERAL WAY WA Zip: 98023-2535 Phone(s) w/Area Code: 206 839-5785 Need Interpreter? (Yes or No): <input checked="" type="checkbox"/> No Language: ENG
If your information is <b>confidential</b> , you must provide the name, address and phone number of someone willing to be your "contact." Contact Name: Contact Address: Contact Phone:

If you filed the petition for someone else, list your name, contact phone number and address:

Minor's Information			Describe the minor's relationship using terms such as: child, grandchild, stepchild, nephew, none. →				Minor's Relationship to	
Name: First	Middle	Last	Sex	Race	Birth date	Resides With	Protected Person	Restrained Person

Filled out by: [Signature] (date) 5/1/08 For Additional Information →

KIM, FULI

051408

C

FILED

10 SEP 08 AM 11:51

KING COUNTY  
SUPERIOR COURT CLERK  
HONORABLE ANDREA DARVAS  
E-FILED

CASE NUMBER: 09-2-19157-3 KNT

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

CAROLA WASHBURN and JANET LOH,  
individually, and on behalf of the ESTATE OF  
BAERBEL K. ROZNOWSKI, a deceased  
person,

Plaintiffs,

v.

CITY OF FEDERAL WAY, a Washington  
municipal corporation,

Defendant.

NO. 09-2-19157-3 KNT

ORDER DENYING DEFENDANT'S  
MOTION FOR RECONSIDERATION OF  
ORDER DENYING SUMMARY  
JUDGMENT

THIS MATTER having come on regularly before this court on defendant's "Motion for Reconsideration of Order Denying Summary Judgment and, in the alternative, for Certification of August 13, 2010 Order Pursuant to RAP 2.3(b)". The Court reviewed the pleadings and files in this matter, specifically including the following:

1. Defendant's Motion for Reconsideration of Order Denying Summary Judgment and, in the alternative, for Certification of August 13, 2010 Order Pursuant to RAP 2.3(b);

ORDER DENYING DEFENDANT'S MOTION  
FOR RECONSIDERATION OF ORDER  
DENYING SUMMARY JUDGMENT - 1

**Judge Andrea Darvas**  
King County Superior Court  
Maleng Regional Justice Center  
401 Fourth Avenue N.  
Kent, WA 98032  
(206) 296-9270



1 keep Roznowski under surveillance; (2) making any attempts to contact Roznowski; and (3) being  
2 within 500 feet of Roznowski's residence. After obtaining the Temporary Order of Protection,  
3 Roznowski dropped it off at the Federal Way Police Department for service on Kim.<sup>1</sup>

4 On May 3, 2008, shortly after 8:00 a.m., Officer Andrew Hensing of the Federal Way Police  
5 Department served Kim with the Temporary Notice of Protection and Notice of Hearing. Officer  
6 Hensing served Kim at Roznowski's home. Kim confirmed his identity, and Officer Hensing  
7 explained to Kim that he had to be present in court for a hearing, as noted on the order, and that Kim  
8 was required to comply with the terms of the order and to leave the premises. Officer Hensing  
9 noticed that there was another person present in the home, but he did not make any attempt to deter-  
10 mine the identity of the other person, and does not know if it was Roznowski. Officer Hensing then  
11 left, without taking any steps to see that Kim complied with the order. Some hours later, Kim  
12 stabbed Roznowski to death in her home.<sup>2</sup>

13 **B. Chapter 10.14 RCW.**

14 The legislature adopted RCW 10.14 in 1987, after making a finding that prevention of  
15 harassment "is an important governmental objective." RCW 10.14.010. The statute was "intended  
16 to provide victims with a speedy and inexpensive method of obtaining civil antiharassment protect-

17 \_\_\_\_\_  
18 <sup>1</sup> Roznowski was informed that the law provides that the Temporary Order of Protection would  
not take effect until Kim had been served with a copy.

19 <sup>2</sup> Plaintiff has additional theories of liability against the defendant based on events that occurred  
20 after Kim was served but before Roznowski was killed. However, the court does not reach those  
21 issues in this decision, as it was not necessary to do so in order to decide the defendant's motion  
for summary judgment or the defendant's motion for reconsideration.

1 tion orders preventing all further unwanted contact between the victim and the perpetrator.” *Id.*  
2 The antiharassment statute contains provisions for enforcement by the police. It states that law  
3 enforcement agencies who receive the antiharassment order “shall forthwith enter the order into any  
4 computer-based criminal intelligence information system available,” and provides that “[t]he order  
5 is fully enforceable in any county in the state.” RCW 10.14.110(1). While Chapter 10.14 RCW  
6 does not **require** a police officer to arrest a person who violates an antiharassment order, the statute  
7 does make a knowing violation of an Order of Protection issued under that Chapter a criminal  
8 offense.<sup>3</sup>

### 9 C. The Public Duty Doctrine

10 “To prove negligence, a plaintiff must show that the defendant (1) had a duty to the  
11 plaintiff, (2) breached that duty, and (3) proximately caused the plaintiff’s injuries by the  
12 breach.” *Smith v. City of Kelso*, 112 Wn. App. 277, 281 (2002), citing *Hertog v. City of Seattle*,  
13 138 Wn.2d 265, 275, 979 P.2d 400 (1999). “The existence of a duty is a question of law and  
14 depends on mixed considerations of ‘logic, common sense, justice, policy, and precedent.’”  
15 *Caulfield v. Kitsap County*, 108 Wn. App. 242, 248 (2001), quoting *Hartley v. State*, 103 Wn.2d  
16 768, 779 (1985).

17 In cases involving claims of negligence against government entities, courts have reasoned  
18 that it would be unfair and unworkable to impose liability on the government to an entire

19 \_\_\_\_\_  
20 <sup>3</sup> “Any respondent age eighteen years or over who willfully disobeys any civil antiharassment  
21 protection order issued pursuant to this chapter shall be guilty of a gross misdemeanor.” RCW  
10.14.170.

1 universe of persons who are not reasonably foreseeable victims of any particular act of negli-  
2 gence by public officials.

3 [N]o liability may be imposed for a public official's negligent conduct unless it is  
4 shown that the duty breached was owed to the injured person as an individual and  
5 was not merely the breach of an obligation owed to the public in general (*i.e.*, a  
6 duty to all is a duty to no one).

7 *Taggart v. State*, 118 Wn.2d 195, 217 (1992), quoting from *Taylor v. Stevens Cy.*, 111 Wn.2d  
8 159, 163 (1988).

9 An appropriate analysis of the issues raised by defendant's motion for summary judgment  
10 and defendant's motion for reconsideration requires careful examination of both the underlying pur-  
11 pose and the application of the "public duty doctrine". The public duty doctrine was developed by  
12 our courts after sovereign immunity was abolished. The doctrine was necessitated by the need to  
13 shape and to narrow the scope of governmental liability where an alleged tort involved the  
14 breach of a duty to the public as a whole, rather than to a particular plaintiff.

15 Although it began its life with a legitimate purpose, the public duty doctrine is  
16 now regularly misunderstood and misapplied. Its original function was a  
17 focusing tool that helped determine to whom a governmental duty was owed.  
18 It was not designed to be the tool that determined the actual duty. *J & B Dev.*  
19 *Co. v. King County*, 100 Wn.2d 299, 303-05, 669 P.2d 468 (1983). Properly,  
20 the public duty doctrine is neither a court created general grant of immunity  
21 nor a set of specific exceptions to some other existing immunity. *Id.* at 303-04,  
669 P.2d 468 (explaining doctrinal differences between the public duty  
doctrine and sovereign immunity). The doctrine was a judicial creation and  
has evolved on a case-by-case basis with this court looking only backward,  
seizing the doctrine and molding it to the facts of whatever case is currently  
before it.

*Cummins v. Lewis County*, 156 Wn.2d 844, 861-62 (2006) (Chambers, J. concurring).

ORDER DENYING DEFENDANT'S MOTION  
FOR RECONSIDERATION OF ORDER  
DENYING SUMMARY JUDGMENT – 5

**Judge Andrea Darvas**  
King County Superior Court  
Maleng Regional Justice Center  
401 Fourth Avenue N.  
Kent, WA 98032  
(206) 296-9270

1 In general, courts have recognized five exceptions to the public duty doctrine's bar on  
2 recovery for the negligence of public employees:

3 These exceptions include: (1) when the terms of a legislative enactment evidence  
4 an intent to identify and protect a particular and circumscribed class of persons  
5 (legislative intent), *Halvorson v. Dahl, supra*, 89 Wn.2d at 676-77, 574 P.2d  
6 1190; (2) where governmental agents responsible for enforcing statutory require-  
7 ments possess actual knowledge of a statutory violation, fail to take corrective  
8 action despite a statutory duty to do so, and the plaintiff is within the class the  
9 statute intended to protect (failure to enforce), *Campbell v. Bellevue, supra*, 85  
10 Wn.2d at 12-13, 530 P.2d 234, *Mason v. Bitton, supra*, 85 Wn.2d at 326-27, 534  
11 P.2d 1360; (3) when governmental agents fail to exercise reasonable care after  
12 assuming a duty to warn or come to the aid of a particular plaintiff (rescue  
13 doctrine), *Brown v. MacPherson's, Inc.*, 86 Wn.2d 293, 299, 545 P.2d 13 (1975),  
14 *see also Chambers-Castanes v. King Cy., supra*, 100 Wn.2d at 285 n. 3, 669 P.2d  
15 468; or (4) where a relationship exists between the governmental agent and any  
16 reasonably foreseeable plaintiff, setting the injured plaintiff off from the general  
17 public and the plaintiff relies on explicit assurances given by the agent or assur-  
18 ances inherent in a duty vested in a governmental entity (special relationship),  
19 *Chambers-Castanes v. King Cy., supra* at 286, 669 P.2d 468, *J & B Dev. Co. v.*  
20 *King Cy., supra*.

21 In addition to these exceptions, we have not applied the public duty doctrine  
where the state engages in a proprietary function such as providing medical or  
psychiatric care. *Petersen v. State*, 100 Wash.2d 421, 671 P.2d 230 (1983) (the  
state can be held liable for negligent decision by physician to release a mentally  
disturbed patient from Western State Hospital).  
*Bailey v. Town of Forks*, 108 Wn.2d 262, 268-270 (1987).

In this case, the City of Federal Way argued in its original motion for summary judgment  
that none of the recognized exceptions to the public duty doctrine apply. This court denied the  
motion, finding that Officer Hensing had a duty to enforce the terms of the Order of Protection that

1 he served on Kim, when Officer Hensing was aware that Kim was currently in violation of that  
2 Order while in Officer Hensing's presence.<sup>4</sup>

3 The failure to enforce exception to the public duty doctrine states that a general  
4 duty of care owed to the public can be owed to an individual where governmental  
5 agents responsible for enforcing statutory requirements (1) possess actual know-  
6 ledge of a statutory violation, (2) fail to take corrective action despite a statutory  
7 duty to do so, and (3) the plaintiff is within the class the statute intended to  
8 protect.

9 *Forest v. State*, 62 Wn. App. 363, 368 (1991), citing *Bailey v. Town of Forks*, *supra*.

10 The crux of the City's argument in this case is that because Officer Hensing did not have  
11 a **mandatory statutory duty** to arrest Kim for violating the Order of Protection, the "failure to  
12 enforce" exception to the public duty doctrine does not apply. Defendant contends that, because  
13 no prior case has explicitly held that police have a duty to enforce court orders, they cannot have  
14 any such duty.

15 Applying to its analysis "considerations of logic, common sense, justice, policy, and  
16 precedent," *Hartley v. State*, 103 Wash.2d 768, 779 (1985), this court finds that the City's  
17 analysis of its duty is far too narrow. While Officer Hensing may not have been statutorily  
18 obligated to **arrest Kim** for Kim's violation of the Order of Protection after he was served in  
19 Roznowski's home, this does not lead to the conclusion that Hensing had no duty to enforce the  
20 Order of Protection. On the contrary, it is axiomatic that police have a duty to enforce court orders.  
21 Court orders would be meaningless if the police were free to treat them as optional.

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<sup>4</sup>The court did not reach plaintiff's arguments relating to other alleged exceptions to the public duty doctrine, as it was not necessary to do so.

1 In this case, Officer Hensing knew he was serving a court order that prohibited Kim from  
2 having contact with Roznowski and that prohibited Kim from being within 500 feet of Roznowski's  
3 home. He knew that the order was for Roznowski's personal protection – not for the protection of  
4 the public at large. Roznowski clearly was within the class of persons that Chapter 10.14 RCW was  
5 intended to protect, and that this particular order was intended to protect. Officer Hensing knew that  
6 Kim was in violation of the Order of Protection because he served Kim with the Order **in Roznow-**  
7 **ski's home**. Yet Officer Hensing walked away, leaving Kim in ongoing violation of the Order.  
8 Officer Hensing also knew (or should have known) that Roznowski had alleged under oath that Kim  
9 was capable of violence. While Officer Hensing may not have had a duty to **arrest** Kim, he none-  
10 theless had a duty to enforce the court order and to make sure that Kim left Roznowski's home.

11 The proposition that a police officer is immune from liability as matter of law when the  
12 officer (1) is personally aware that a respondent is in the home of a protected person in clear  
13 violation of a court order of protection, (2) has personally served the respondent with the order of  
14 protection, (3) has reason to believe that the protected person may be present in the home, but does  
15 nothing to investigate that possibility, (4) has in his possession information that the respondent is  
16 capable of violence, and (5) walks away, leaving the respondent in the protected person's home,  
17 would stretch the public duty doctrine past the point of absurdity. It would violate "principles of  
18 logic, common sense, justice, policy, and precedent". *Hartley v. State*, 103 Wash.2d 768, 779,  
19 (1985).

20 Defendant's argument that this court's "newly created duty is vague and unworkable" does  
21 not mandate a different result. This court's order is quite narrow: the public duty doctrine does not

ORDER DENYING DEFENDANT'S MOTION  
FOR RECONSIDERATION OF ORDER  
DENYING SUMMARY JUDGMENT – 8

**Judge Andrea Darvas**

King County Superior Court  
Maleng Regional Justice Center  
401 Fourth Avenue N.  
Kent, WA 98052  
(206) 296-9270

1 bar plaintiff's claims against the City of Federal Way. What Officer Hensing should have done to  
2 enforce the court order, and whether his failure to take any step to enforce the court order was a  
3 proximate cause of Roznowski's death, are issues that the trier of fact will need to decide based on  
4 the evidence that will be presented at trial.

5 **D. Defendant's Request for Certification to the Court of Appeals.**

6 Discretionary review generally is disfavored, because of the danger of piecemeal, multiple  
7 appeals. *Right-Price Recreation, L.L.C. v. Connells Prairie Cmty. Council*, 146 Wn.2d 370, 380  
8 (2002). "Denial of a motion for summary judgment is generally not an appealable order, RAP  
9 2.2(a), and discretionary review of such orders is not ordinarily granted." *Caulfield v. Kitsap*  
10 *County*, 108 Wn .App. 242, 249 (2001).

11 While defendant is correct that the issue of whether it owed Roznowski any duty "is a  
12 threshold legal issue," defendant's argument that the issue "is both novel and complex" is not a  
13 compelling basis for interlocutory appellate review. This court declines to certify its order denying  
14 the defendant's motion for summary judgment of dismissal under RAP 2.3(b)(4).

15 DATED this 8<sup>th</sup> day of September, 2010.

16  
17 s/ \_\_\_\_\_  
18 HONORABLE ANDREA DARVAS

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21  
ORDER DENYING DEFENDANT'S MOTION  
FOR RECONSIDERATION OF ORDER  
DENYING SUMMARY JUDGMENT - 9

**Judge Andrea Darvas**  
King County Superior Court  
Maleng Regional Justice Center  
401 Fourth Avenue N.  
Kent, WA 98032  
(206) 296-9270

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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

CAROLA WASHBURN and JANET LOH,  
individually, and on behalf of the ESTATE OF  
BAERBEL K. ROZNOWSKI, a deceased  
person,

Plaintiffs,

vs.

CITY OF FEDERAL WAY,

Defendant.

No. 09-2-19157-3 KNT

ORDER GRANTING PLAINTIFFS'  
MOTION FOR NEW TRIAL ON  
DAMAGES FOR LOSS OF  
CONSORTIUM

THIS MATTER came on before this Court on Plaintiffs' motion for additur, or in the alternative, for a new trial on the limited issue of Ms. Washburn's and Ms. Loh's damages for the noneconomic damages they sustained as a result of their mother's death. The Court reviewed the files and records herein, including

1. Plaintiffs' Motion for an Additur, or Alternatively, a new Trial on the Issue of Ms. Washburn and Ms. Loh's Damages;
2. Defendant's Response in opposition;
3. Plaintiff's Reply;
4. Defendant's Brief in Response to the Court's Questions; and
5. Plaintiffs' Memorandum in Response to the Court's Questions.

The Court also heard oral argument by counsel in this matter.

1           Having considered the evidence, briefing and argument, the Court finds that there is  
2 no evidence nor reasonable inference from the evidence that would justify a damages award  
3 of \$0 to plaintiffs Washburn and Loh for loss of consortium, where the jury found that the  
4 defendant was negligent, that the negligence of the defendant was a proximate cause of injury  
5 and damage to the plaintiffs, and where the jury awarded a substantial sum as damages to the  
6 Estate for "[t]he pain, suffering, anxiety, emotional distress, humiliation, and fear experienced  
7 by Baerbel Roznowski prior to her death as a result of the attack and the stabbing". Ins. 18.

8           Evidence of Washburn's and Loh's close and loving relationship to their mother was  
9 substantial and completely un rebutted. Given a finding of negligence and proximate cause,  
10 there simply is no rationale for the jury's failure to award the individual plaintiffs some  
11 damages for loss of consortium.

12           It is true that "[j]uries have considerable latitude in assessing damages, and a jury  
13 verdict will not be lightly overturned. *Herriman v. May*, 142 Wn. App. 226, 232 (2007),  
14 citing *Palmer v. Jensen*, 132 Wn.2d 193, 197, 937 P.2d 597 (1997) and *Cox v. Charles Wright*  
15 *Academy, Inc.*, 70 Wn.2d 173, 176 (1967). However, where a verdict is not supported by  
16 substantial evidence (or as in this case, by *any* evidence), a new trial is mandated. Indeed, "it  
17 is an abuse of discretion to deny a motion for a new trial where the verdict is contrary to the  
18 evidence." *Palmer v. Jensen*, 132 Wn.2d 193, 198 (1997).

19           Defendant argues that substantial evidence could support a determination by the jury

20  
21                   either that Mr. Kim's actions were an independent intervening  
22                   cause breaking the chain of proximate cause between the City's  
23                   negligence and Ms. Loh's and Ms. Washburn's injuries and thus,  
24                   Ms. Loh's and Ms. Washburn's damages, caused solely by Mr.  
25                   Kim, were segregated from and not made part of its award in favor  
26                   of Ms. Roznowski.

27 Defendant's Brief in Response to the Court's Questions, pp 5-6. The problem with this argu-  
28 ment is that defendant has advanced no theory under which any rational trier of fact could  
29 conclude that Ms. Roznowski's "pain, suffering, anxiety, emotional distress, humiliation, and

1 fear experienced . . . prior to her death as a result of the attack and the stabbing" were prox-  
2 imately caused by the defendant's negligence (as the jury did find) but that Washburn and  
3 Loh's damages for loss of consortium, which arose *solely* as a result of their mother's death,  
4 were *not* proximately caused by the defendant's negligence. As plaintiffs' memorandum  
5 points out, there was only *one* death at issue in this case, and it is beyond dispute that Ms.  
6 Roznowski's death was directly caused by the attack and stabbing that the jury specifically  
7 awarded damages for. There was neither evidence nor argument at trial from which the jury  
8 could have concluded that Ms. Roznowski's death was due to some other cause.

9 In addition, the verdict form asked the jury whether the negligence of the defendant  
10 was a proximate cause of injury or damage to "the plaintiffs", and the jury answered this  
11 question in the affirmative<sup>1</sup>. Thus the jury specifically found that the defendant's negligence  
12 was a proximate cause of injury or damage to more than one of the three plaintiffs (the Roz-  
13 nowski Estate, Ms. Washburn, and Ms. Loh).

14 For the foregoing reasons, the Court finds that plaintiff's motion for a new trial on the  
15 limited issue of damages for Washburn's and Loh's loss of consortium must be granted,  
16 pursuant to CR 59(a)(7).

17 Plaintiffs additionally have moved for an additur under CR 59(a)(5) and RCW  
18 4.76.030. However, "[b]efore passion or prejudice can justify reduction of a jury verdict, it  
19 must be of such manifest clarity as to make it unmistakable." *Bingaman v. Grays Harbor*  
20 *Community Hosp.*, 103 Wn.2d 831, 836 (1985), citing *James v. Robeck*, 79 Wn.2d 864, 870  
21 (1971). No evidence has been presented establishing that the jury was prejudiced against any  
22 plaintiff. Plaintiffs' motion for an additur therefore is denied.

23  
24  
25 <sup>1</sup> Arguably, Ms. Loh and Ms. Washburn were not proper plaintiffs in their individual capacities, and  
26 should not have been named as such in the case caption. However, they have been so denominated  
throughout the pendency of this case, and defendant never filed a motion to amend the caption.  
Neither did defendant take exception to the fact that Question No. 2 of the verdict form asked about  
damages to "the plaintiffs" [plural] rather than to any individual plaintiff.



E

FINAL BILL REPORT

SSE 4541  
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C 263 L 81

BY Senate Committee on Judiciary (originally sponsored by Senators  
Talmadge, Hemstad, Woody, Wojahn, Granlund and Peterson)

Establishing provisions for relief from domestic violence.

Senate Committee on Judiciary

House Committee on Judiciary

SYNOPSIS AS ENACTED  
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BACKGROUND:

A victim of domestic violence who seeks legal protection has few options. A married victim may file for dissolution of the marriage or a legal separation and apply for a "no contact" order pending the domestic relations proceeding. However, there is no provision for a victim to obtain a civil protection order independent of domestic relations proceedings.

As of October, 1983, 43 states and the District of Columbia have enacted legislation that allows victims of domestic violence to obtain civil protection orders. These orders are available to victims regardless of marital status.

SUMMARY:

A civil remedy is created for persons abused by family and household members. A victim may file with the municipal, district or superior court for a protection order, an injunction designed to prevent violence by one member of a household or family against another. A \$20 filing fee shall be charged. The superior court has exclusive jurisdiction in certain circumstances.

After notice and hearing, the court may restrain any party from committing acts of domestic violence, exclude the abusing party from the dwelling, award temporary custody and visitation rights, require the abusing party to participate in treatment or counseling, or order any other relief deemed necessary. A temporary ex-parte order notice may be granted if irreparable injury could result without immediate issuance of an order.

After a protection order is granted and the abusing party knows of the order, violation of the restraint or exclusion provisions of the order is a misdemeanor. An abusing party who violates the order three times and receives three convictions for assault is guilty of a class C felony. Violation of the protective order is also contempt of court and may be punished accordingly. Peace officers are authorized to arrest the abusing person without a warrant in certain circumstances.

NOTES ON FINAL PASSAGE:

Senate	47	0	
House	95	0	(House amended)
Senate	44	0	(Senate concurred)

EFFECTIVE: June 7, 1984  
October 1, 1984 (Sections 1-29)

KPLU October 8, 1984

DOMESTIC VIOLENCE REPORT

COMMENTATOR: ... of enforcement varies around the state and that improvements need to be made. The evaluation was conducted by the State Shelter Network, the Evergreen Legal Services and Washington Women Lawyers. The survey focuses on the state's 1979 Domestic Violence Act but Susan Crane of Evergreen Legal Services says the 1984 Domestic Violence legislation that took effect last month did not make the study of the 1979 law a hollow exercise.

CRANE: The 84 act is an amendment to the 79 act so the requirements that existed before still exist now it's just that there are some new requirements. The new requirements that come out of the 84 act deal specifically with police procedure and don't change prosecutor's procedures and judge's procedures in criminal cases an awful lot.

COMMENTATOR: Crane says the new update in the Domestic Violence law which has dramatically swelled domestic violence arrests does a lot to address varying levels of enforcement among the state's different local law enforcement agencies. The new law requires police to make arrests when there is probable cause to believe an assault has occurred. There also has been created a new procedure for the aggrieved party to obtain a court protection order to require a battering spouse or companion to keep away. Executive Director, Catherine Elliot, of the Washington State Shelter Network says that when women called police to report a domestic assault, they couldn't

be sure before whether the officer responding would do anything about it.

ELLIOT: If I'm severely hurt or a weapon has been used on me I don't have a guarantee that I'll be protected with arrest under the 1979 law.

COMMENTATOR: But Elliot says that of 182 women surveyed who were domestic violence victims most did not call police even if they had suffered a criminal assault except as a last resort. The report shows that of 182 cases studied weapons were used in one-fifth of the cases, victims suffered injuries in two-thirds of the cases, and in one-fifth of the instances victims received hospital treatment.

But if police are now arresting on probable cause, the organizers of the study say there's much that can be done among judges and prosecutors. Mary Weshler of Washington Women Lawyers listed the recommendations of the prosecutors, these including deciding whether to file domestic violence charges within the 5 days required by law. She says prosecutors should give domestic violence cases higher priority. The study also says that judges in many cases are not aware of the domestic violence law or not alerted that particular cases before them come under that provision. The study also calls for treatment of domestic violence as a serious crime and for development of clear statewide procedures for identifying such cases. Also suggested are information networks within the criminal justice

system and more training to handle domestic violence cases. Crane says more funds are needed from the legislature to protect more women from violence at home. She says there's not enough money for prosecutors, and womens' shelters are forced constantly to turn away victims of domestic violence because there's just not enough room. Her argument to the complaint that there are not enough funds available is that it costs too much to do nothing.

CRANE: Before what we were finding was that if the police went out to the same family's residence 7 times in an evening and it cost them a couple hundred dollars each time they sent that police car out there, that wasn't being kept track of as a cost of domestic violence. The numbers of people going into hospital emergency rooms - several studies have been done that have shown that most of the women who come into hospital emergency rooms are there because of domestic violence. Nobody's kept real good statistics on that and so what we've done with the new law is that by having early intervention people are saying "oh my god look at the costs here" but I think that what we're doing is that we're just displacing the costs that we've always had and we're taking care of the problem a little bit earlier.

COMMENTATOR: Crane says the City of Spokane was the only jurisdiction found in total compliance in its enforcement of domestic violence law. In the 32 other jurisdictions studied, compliance ranged from

Page 4

18 to 85 per cent and she says that statewide in 1983 out of 182 domestic violence cases studied with 152 involving chargeable crimes there were only 17 convictions. (Editor's Note: The study found 17 arrests, rather than convictions.)

MG:mj10-12

A Summary of  
The Domestic Violence Prevention Act

By Kyle Aiken, Counsel,  
Senate Judiciary Committee

In 1979, the Washington Legislature enacted a law on Domestic Abuse which stressed the need for protection of the victims of domestic abuse. That law created no-contact orders to be issued by the court when criminal charges were pending in a domestic violence case. Washington's dissolution law also provides for a no-contact order to be issued by a court when a dissolution or legal separation is pending.

In 1984, it was realized that these two provisions were not adequate to protect victims of domestic violence. First, both types of orders are limited in duration. The domestic abuse no-contact order is in effect only until the defendant is sentenced. The dissolution no-contact order is in effect only until the dissolution is final. The problem is that, oftentimes, the violence does not end with the entry of the sentence or the divorce decree. Second, the orders are limited in their scope. The domestic abuse no-contact order can only be issued after an arrest--after the victim has been assaulted. The dissolution no-contact order can only be obtained by a person filing for a divorce. Sometimes, the batterer is not married to the victim. People living together or someone abused by a former spouse are not afforded protection.

The legislature then enacted the Domestic Violence Prevention Act. This act, modeled after similar laws in 43 other states and the District of Columbia, enables victims of domestic abuse to obtain a civil protection order, independent of any dissolution proceeding or criminal process, to protect the victim and his or her minor children or household members from domestic violence. The act also requires the police to make arrests in certain cases--where there is probable cause to believe that an assault has occurred or where there has been a knowing violation of the restraining or exclusion provisions of a no-contact order.

The Protection Order

This section of the new law allows victims of domestic violence to obtain restraining orders without having to initiate domestic relations actions or wait for the batterer to be arrested. A victim of domestic violence can obtain an order restraining or preventing the batterer from further acts of violence by filing a petition with any municipal, district, or superior court. The filing fee is twenty dollars and may be waived if the victim can not afford the fee. Once issued, the order is valid for up to one year.

A temporary order may be issued in emergency situations. The temporary, or ex parte, order may require that the batterer not commit any acts of domestic violence, to stay away from the shared residence of the victim and the batterer, not to interfere with the petitioner's custody of minor children and not to remove children from the court's jurisdiction.

After fourteen days with at least five days notice to the batterer, a full hearing will be held on the request for the permanent protective order. In addition to the relief listed above, the court may also award temporary custody and establish temporary visitation, order the batterer to seek treatment or counseling, and order the batterer to pay the victim's costs, including the filing fee, service fees and a reasonable attorney's fee, and to pay court costs. The court can also order law enforcement to assist in the enforcement of the order.

The victim and the batterer both receive a copy of this order. The order is also filed with the court and given to law enforcement. The law enforcement agency will enter the order in a centralized computer system so that the order can be enforced through out the state. Later, if the batterer violates the provisions of the protection order prohibiting violence or excluding the batterer from a residence and the police find probable cause to believe that the batterer did violate the order, the police must arrest the batterer. Three simple assault convictions against a family or household member is felony. If the batterer violates any other provisions of the protective order, he or she may be found in contempt of court.

#### Law Enforcement Requirements

Before this new law took effect, on September 1, 1984, law enforcement had complete discretion when responding to a domestic violence call. They could arrest the batterer, they could mediate the couple, they could separate the parties, or take any other action they deemed appropriate. Several recent studies have found that police actions do have an impact on whether the domestic violence is repeated and in what form. In specific, the studies have indicated that arrest in itself can cut down on the number of future incidents of domestic violence and the intensity of those incidents. For example, the different studies found:

1. Victims of family violence are twice as likely to be assaulted again if police do not arrest the attacker.
2. In 35 percent of the cases where police did not make an arrest, victims suffered a repeat attack within 6 months. When police made an arrest, only 19 percent of the victims reported repeated violence.

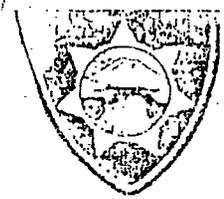
3. Arrest appeared to have no effect on the stability of the couple's relationship. A majority of the relationships dissolved during the follow-up period no matter what the police did.
4. Recidivism rates, measured from official police records, were 10 percent in the arrest cases, 17 percent in the mediation cases and 24 percent in the separation cases. That particular report concludes that "[d]espite all cautions, it is clear that the recidivism measure is lowest when police make arrests."
5. In Oregon, there was a 10 percent decrease in domestic homicides following the implementation of their domestic violence legislation while nondomestic homicides increased 10 percent.

The new law requires the police to make an arrest in domestic violence situations if the police officer finds probable cause to believe that an assault has occurred within the preceding four hours. The police must find that an assault, an unjustified and unpermitted touching, has occurred. The police are required to make just one arrest. They do not have to arrest if the assault is justified--such as parental discipline, self-defense, or trivial contacts.

The police must also arrest if the batterer violates the no violence or exclusion from the family residence provisions of a no-contact order. In these cases, the police must find that there is a valid order, that the batterer knew of the order, and that there is probable cause to believe that the batterer violated the no violence or exclusion provisions of the order.

KA:ka5

# TACOMA POLICE DEPARTMENT



## Intra-Departmental Memorandum

TO: Lt. David Lane  
Inspectional Services

DATE: June 28, 1984

FROM: Michael D. Smith  
Police Legal Advisor

THROUGH:

SUBJECT: LAWS OF 1984 - CHAPTER 263  
DOMESTIC VIOLENCE PREVENTION ACT

The purpose of this memorandum is to provide you with a brief synopsis of the contents of the 1984 Domestic Violence Prevention Act insofar as it relates to City police functions. Because the Act involves a major change in the way that officers are required to deal with domestic violence situations, and because the Act takes effect September 1, 1984, I recommend that immediate steps be taken to train line officers in the applications thereof.

The Act's major points of interest to line officers are as follows:

### I. Domestic Violence Prevention Act

- A. "Domestic Violence" is defined under the Act to mean physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members or sexual assault of one family or household member by another.
- B. "Family or Household Members" is defined by the Act to mean spouses, adult persons related by blood or marriage, persons who are presently residing together, or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time.

It is important to note in dealing with domestic violence complaints that the key to recognizing domestic violence under the new Act is a relationship arising out of a mutual residence. The Act does not require a marital relationship; nor does the Act require necessarily a family relationship of any kind. It is also important to note that domestic violence need not occur in a residential or home setting, but may occur outside a residence between household members or former household members. For example, physical violence inflicted or threatened by a person against another with whom the other had previously been married constitutes domestic violence. Physical violence or the threat thereof against a present or past college roommate may constitute domestic violence. Physical violence or the threat thereof by the unmarried living partners, regardless of sexual orientation, may constitute domestic violence. Physical violence or the threat thereof by the persons who have resided together in a residential relationship may constitute domestic violence even if the violation or threat of violence occurs outside of the home.

- C. The Act provides that a complainant may seek a Protective Order restraining a person from committing acts of domestic violence, including the person from the dwelling which they share or from the residence of the petitioner, awarding temporary child custody or visitation rights, ordering the respondent to take treatment or counseling services and other relief it deems necessary for the protection of the petitioner or household member. This order will frequently be issued by District or Municipal Court judges and will be enforceable on their order.
- D. A court, including Municipal and District Courts, may, before a hearing is had, grant an ex parte temporary Protective Order restraining respondent from committing domestic violence, excluding respondent from a dwelling shared with the petitioner or from the petitioner's residence, and restraining a party from interfering with the other party's custody of minor children. Such order may be the result of an ex parte hearing without notice to respondent and may, when appropriate, be issued after telephone inquiry by the judge. An ex parte temporary Protective Order will have a 14-day life from the date of its issuance but may be reissued by the judge's order.
- \* E. Upon issuing such a Protective Order or temporary Protective Order, a judge may order a peace officer to accompany the petitioner and assist in placing petitioner in possession of the dwelling or residence, or otherwise assist in the execution of the Order of Protection. This provision will place upon the Tacoma Police Department an obligation to respond to direct Court Orders to take action to enforce a Court Order under the Act at the residence of the petitioner.
- \* F. When a Protective or temporary Protective Order is issued by the Court, the Court may order the Police Department to serve the resident personally with the order. Such service should be considered a matter of Departmental urgency and be given priority attention.
- \* G. Any Protective Order or temporary Protective Order issued by the Court must be placed in the LESA computer no later than the following working day. All other jurisdictions in the State are bound by the same requirement and must put all orders of this kind into their computer not later than the following working day. Such orders, when entered into the law enforcement computer, constitute notice to all law enforcement agencies in the State of the existence of the Order and are enforceable statewide.
- \* H. The Act provides: A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under this chapter that restrains the person or excludes the person from a residence, if the person restrained knows of the ord-

A police officer has probable cause to believe that a person has knowingly violated an order under this Chapter if the officer has evidence that the person knew of the order and if the officer is told by a reliable witness that there has been a violation. In short, if an officer is told by a woman that her husband has violated the order and the woman appears to be believable, the police officer has probable cause to believe and must arrest the husband.

- I. No peace officer may be held criminally or civilly liable for making an arrest under Section 12 of this Act if the police officer acts in good faith and without malice.

It is apparent that the legislature intends by this section to protect officers acting in good faith under the Act. Officers acting conscientiously to enforce the Act have substantial protection and should not be concerned about civil liability. Officers should note, however, that neither the City

## I. (Cont.)

nor the officer has any specific immunity granted for failure to enforce the act. It is likely, that officers will impose upon the City and may threaten themselves with civil liability if they fail to make an arrest when one is required under the Act.

II. Amendment to Chapter 9A.36 RCW.

Section 18 of the Domestic Violence Prevention Act amends RCW 9A.36.040 to provide that any person convicted of three offenses of assault or simple assault, when such assaults are against family or household members, is guilty of a Class C felony.

III. Amendment to Chapter 10.31 RCW.

- A. RCW 10.31.100, the State law which authorizes arrest without a warrant under certain circumstances, has been amended to require arrest for domestic violence without a warrant.
- B. RCW 10.31.100 is amended to provide that a police officer shall arrest and take into custody, pending release on bail, personal recognizance or a Court Order, a person without a warrant when the officer has probable cause to believe that: (1) an order has been issued, which the person has knowledge of, which order restrains the person from acts or threats of violence or excludes the person from residence and the person has violated the order; or (2) the subject within the preceding four hours has assaulted that person's spouse, former spouse, or other person with whom the person resides or has formerly resided.
- C. This section of the Act also provides that no police officer may be held criminally or civilly liable for making an arrest pursuant to this section if the police officer acts in good faith and without malice.

IV. Amendment to Chapter 10.99 RCW.

- \* A. Chapter 10.99, RCW is amended to require that all training relating to the handling of domestic violence complaints by law enforcement officers stress enforcement of the 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 are required to cooperate in all aspects of such training.
- \* B. Amendments to RCW 10.99.030 also declare that 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." Officers should note here the emphasis on protection of a complainant as distinct from a more traditional peace keeping role.
- \* C. Amendments to Chapter 10.99 RCW also provide, as does the act in other places, that "when a peace officer responds to a domestic violence call and has probable cause to believe that a crime has been committed, a police officer shall exercise arrest powers with reference to the criteria in RCW 10.31.100." RCW 10.31.100, as amended by Section 20 of the Act, makes the following crimes violations of the Domestic Violence Act when committed against a family or household member:

## C. (Cont.)

- (1) Assault in the first degree (RCW 9A.36.070);
- (2) Assault in the second degree (RCW 9A.36.020);
- (3) Simple assault (RCW 9A.36.040);
- (4) Reckless endangerment (RCW 9A.36.050);
- (5) Coercion (RCW 9A.36.070);
- (6) Burglary in the first degree (RCW 9A.52.020);
- (7) Burglary in the second degree (RCW 9A.52.030);
- (8) Criminal trespass in the first degree (RCW 9A.52.070);
- (9) Criminal trespass in the second degree (RCW 9A.52.080);
- (10) Malicious mischief in the first degree (RCW 9A.48.070);
- (11) Malicious mischief in the second degree (RCW 9A.48.080);
- (12) Malicious mischief in the third degree (RCW 9A.48.090);
- (13) Kidnapping in the first degree (RCW 9A.40.020);
- (14) Kidnapping in the second degree (RCW 9A.40.030); (and)
- (15) Unlawful imprisonment (RCW 9A.40.040);
- (16) Violation of the provisions of a restraining order restraining the person or excluding the person from a residence (RCW 26.09.300);
- (17) Violation of the provisions of a protection order restraining the person or excluding the person from a residence (section 7, 8 or 14 of this 1984 act);
- (18) Rape in the first degree (RCW 9.79.170); (and)
- (19) Rape in the second degree (RCW 9.79.180).

From the foregoing, it appears that where an officer has probable cause to believe that any of the foregoing listed crimes has been committed by one family or household member against another, or between persons who have lived together in the past or who have a child in common, he/she is required to make an arrest at the time of the initial call.

- \* D. The Act requires the responding police officer to notify the victim of the victim's right to initiate a criminal proceeding in all cases where the officer has not exercised arrest powers but has decided to initiate criminal proceedings by citation or otherwise.
- \* E. The Act also requires a police officer responding to a domestic call to take a complete offense report in every case, which report must describe the officer's disposition of the case.
- \* F. The police officer responding to a domestic violence call is required under the Act to advise the victims of all reasonable means to prevent further abuse, including advising the victims of the availability of shelter or other services in the community, and providing the victim with immediate notice of his or her legal rights and remedies available. The Act prescribes a written form of notice, which notice describes to a potential victim the right to seek a Protective Order in a Municipal or District Court.
- \* G. When a defendant is released from custody as a result of a domestic violence incident, the Court releasing the defendant is required now to make a determination regarding the need to protect the victim from further contact from the defendant. The releasing Court is now authorized to enter a No Contact Order upon release as a condition of release, which

## G. (Cont.)

"No Contact" order may be issued by telephone and followed up as soon as possible in writing. Whenever such "No Contact" order is issued by the Court, a clerk of the Court is required on or before the next working judicial day to direct a copy of the order to the appropriate law enforcement agencies specified in the order. Upon receipt of the copy of the order into the law enforcement information system, all law enforcement agencies in the State are charged with notice of the Order and are required to enforce the terms thereof.

- \* H. Section 24, as an amendment to RCW 10.99.050, provides that whenever a Court finds a defendant guilty of a crime and as a condition of sentencing restricts the defendant's ability to have contact with the victim, a copy of such order is required to be directed to the appropriate law enforcement agency by the next working judicial day. Upon receipt of the order and entry of the order into the law enforcement agency's computer system, all law enforcement agencies in the State are charged with notice of the Order and are required to enforce it.

Section 25 of the Act requires that all police officers in the State shall enforce orders issued by any Court in this State restricting a defendant's ability to have contact with any victim by arresting and taking the defendant into custody when the police officer has probable cause to believe that the defendant has violated the terms of the Order.

It is notable that, although this provision appears in the Domestic Violence Act, the provision of the specific section is not limited to domestic violence defendants. If a "No Contact" order is entered as a condition of a sentence in criminal proceedings, irrespective of the kind of crime, defendant or victim, such "No Contact" order appears to be enforceable under the foregoing mandatory rules.

V. Amendments to Chapter 26.09 RCW - Laws Regarding Dissolution of Marriage.

- \* A. Under the Act, temporary restraining orders issued in divorce proceedings may, upon order of the Court, be entered into the law enforcement agencies' computer-based criminal information system. Upon entry into the computer system, all law enforcement agencies in the State are upon notice of the existence of the order and are required to enforce the order. Such order is enforceable statewide.
- B. Whenever such a restraining order is issued in a divorce proceeding and the restrained person knows of the order, a violation of the provisions of the order is a misdemeanor.
- \* C. In divorce proceedings, a person is deemed to have notice of the restraining order if the person or his attorney was in Court when the order was signed, the Order was served upon the person to be restrained or a police officer gives the person oral or written evidence of the order by reading from it or handing to the person a certified copy of the original order, certified to be true and accurate.
- \* D. A police officer is required to verify the existence of such a restraining order by: (1) obtaining information confirming the existence of the order and the terms thereof from a law enforcement agency or (2) obtaining a certified copy of the order from the clerk of the Court.

- \* E. The Act requires that a peace officer must arrest and take into custody, pending release on bail, personal recognizance, or a Court Order, a person without a warrant when the officer has probable cause to believe that the person has knowingly violated the terms of the restraining order which restrains threats or acts of violence or excludes the person from a residence.
- F. The act provides that no peace officer may be criminally or civilly liable for making an arrest under this subsection, if the officer acts in good faith and without malice.

#### VI. Arrests Under the Domestic Violence Prevention Act.

\* The Domestic Violence Prevention Act, with three exceptions, does not provide criminal penalties or create new substantive violations. The Act generally provides law enforcement agencies with a tool (and a mandate) to deal with domestic violence situations by exercise of arrest powers. Generally, then, arrests mandated by the Domestic Violence Prevention Act are still made by reference to the criminal act committed. Most frequently, such arrests will be for simple assault, destruction of property, trespassing or malicious mischief. Such charges should be written by arresting officers as in the past, with the added notation indicating arrest for domestic violence violations.

In three instances, the Act sets forth violations which may be independently charged. These instances deal with violation of court orders:

- \* A. It is a misdemeanor to violate a restraining order issued in divorce proceedings which restrains a party from molesting or disturbing the other party. (Violation of Restraining Order - RCW 26.09.300).
- \* B. It is a misdemeanor to violate a "No Contact" Order issued under the Domestic Violence Prevention Act. (Violation of "No Contact" Order, Section 22(3) - Domestic Violence Prevention Act of 1984).
- \* C. It is a misdemeanor to violate a Protective Order or temporary Protective Order issued under the Domestic Violence Prevention Act. (Violation of Protective Order, Section 12(1), Domestic Violence Prevention Act of 1984).

I hope that the foregoing summary will be of some training assistance in preparing for implementation of the Domestic Violence Prevention Act of 1984. I will be happy to assist in such training in any way that I can.

*Michael D. Smith*  
 Michael D. Smith  
 Police Legal Advisor

MDS:cw

Attachments

cc: Director Phillips  
 Major Ottgen  
 Major Strock  
 Det. Jensen  
 City Attorney

## DOMESTIC VIOLENCE - A NEW BEGINNING FOR AN OLD PROBLEM

D. P. Van Blaricom, Chief of Police

Bellevue, Washington

1984

During the first half of 1982, the Bellevue Police Department investigated two nearly identical murder-suicides in which estranged husbands refused to accept the end of their respective marriages by killing first their wives and then themselves.

Despite their dissimilar backgrounds, the victims experienced the same domestic violence phenomenon wherein a once loving relationship ended with tragic murder and self-destruction. The two women, one a practicing physician and the other an Asian refugee seamstress, had much in common:

1. They were self-reliant and achievement oriented;
2. Their husbands previously enjoyed positions of status but subsequently experienced personal failures and had since assumed the roles of literal house husbands dependent upon their wives;
3. There had been long histories of abuse in which the husbands had expressed their frustrations with increasingly severe acts of violence;
4. Police had been called to their homes numerous times but the victims would always decline to prosecute because they intuitively knew that to do so would only further agitate their husbands and more significantly, they also realized that their violent mates would not really be constrained from doing them perhaps even greater harm;
5. The victims finally decided to initiate divorce proceedings and retain custody of their small children; and
6. The rejected spouses would not accept this denial of access to their "possessions" and concluded that mutual death provided the only solution to a dilemma with which they would not otherwise cope.

The resulting events were literally predictable and yet we were unable to effectively intervene. Why, we asked? In endeavoring to learn the answers, we began to understand the dynamics of domestic violence and then set-about designing a program which would address this potentially fatal but always injurious problem.

First of all, we discovered that domestic violence is an escalating pattern of behavior which progresses from name-calling or put-downs in public, through pushing and shoving, hitting or kicking, and ultimately the introduction of deadly weapons or savage beatings until death is caused. Secondly, the victim often tolerates the abuse because she sees no alternative lifestyle available to her and in fact, she may even excuse her husband's exercise of physical punishment by rationalizing that she has somehow been so inadequate as to deserve such treatment. Finally, the victim is painfully aware that our system of criminal justice is demonstrably more concerned with legalistic process than social product and when confronted with the reality of a violent husband who will not allow her to escape from his control, she sees little hope of relief from official sources. It has been a sad but true commentary upon our actual ability to effectively intervene in the cycle of domestic violence that a woman has only two unenviable options when faced with the fact of a husband who will kill her rather than lose her and is willing to do so even at the expense of his own life - she can seek anonymity in another locale and hope to avoid detection by an often relentless pursuer or be killed!

Faced with this unavoidable conclusion, we reasoned that the key to prevention of domestic violence has to be effective intervention at the earliest possible stage of development before it becomes progressively irreversible. And to accomplish that goal, the victim must be given officially supported access to viable alternatives which will enable her to escape intact. We additionally recognized that as imperfect as it may be, the existing criminal justice system is the only one we have and so, we decided to see if it could be made to work in a truly systematic approach to this especially hazardous social illness. With that foremost ideal, we formed a local task force of police, prosecution, court, probation, and professional counseling practitioners who accepted the challenge of designing a uniform program for effectively treating domestic violence.

As a result of their dedicated work, we now have in-place a response methodology which coordinates all facets of the criminal justice system's various mechanisms

and is further supported by an outreach social service component. It proceeds as follows:

1. Upon the first indication of domestic violence between cohabitants (call of a family fight in progress or whatever), a police officer is immediately dispatched to investigate. In every case (regardless of whether or not cause for arrest exists), the officer will make a written report and code it "DV" for specially expedited follow-up attention by all concerned. It is imperative that there be no delay in processing needed relief and priority attention is often required during weekends or other periods outside of normal business hours.

Every victim is also provided with a specially prepared booklet (45 pages in length) which advises her in detail as to what constitutes domestic violence, how she may react emotionally, where special assistance is available, and what to expect from the criminal justice system while also providing answers to personal security questions. In essence, it is a comprehensive primer on how to deal with a very confusing and disturbing personal crisis that hurts both physically and psychologically.

(Insert photograph here)

2. If the victim fears for her well-being, the investigating officer will offer, arrange, or facilitate transportation to a hospital for treatment of injuries or to a place of safety or shelter.
3. Even in cases of arrest on misdemeanor charges, the suspect is jailed with minimum bail set at \$1,000 in cash and that can be raised to \$5,000 if the investigating officer recommends the higher amount due to the individual circumstances of the incident.
4. If an arrest is made, the victim's notarized statement is taken so that in the not infrequent event of later changing her mind about being a

prosecution witness, the statement can be used as a means to elicit the necessary testimony and enable us to legally intervene in a cycle that will otherwise continue.

5. Upon the placing of a criminal charge against the assaultive partner, the City Prosecutor issues a "no contact order" which is enforceable by the police to preclude harassment, intimidation, or further assault.
6. If the charge is a misdemeanor and upon both the admission of the defendant that the crime was in fact committed and with the agreement of the victim, the judge may order a stipulated continuance wherein the defendant is directly diverted into a counseling program for batterers in lieu of trial while remaining under the court's continuing jurisdiction to assure compliance.
7. In all cases, the police report is promptly directed to the social service agency with whom we contract and they contact the victim to provide counseling on available options to continued abuse, emotional or other support, and safehouses when there is a fear for the safety of any person within the household. This outreach approach is essential to causing victims to extricate themselves from an otherwise continuing predicament and it is not sufficient to merely refer them to make a self-initiated call because most often, they simply will not do it!

(Insert flow chart here)

It should be additionally noted that a clear administrative commitment to adequately treating the problem of domestic violence is absolutely critical to success and accordingly, all officers of the Bellevue Police Department are trained to implement the following policy:

## Domestic Violence Policy

### Purpose

To recognize the great significance of domestic violence as a highly dangerous crime with potentially fatal results that occurs within the home and to assure the victim of domestic violence the maximum protection from further abuse which law enforcement efforts can reasonably provide.

### Policy

It shall be the policy of the department that all personnel will respond to a report of domestic violence, as defined by R.C.W. 10.99.020, in accordance with its significance either as a felony or misdemeanor and as a matter of great community concern. All personnel are to be sensitive and responsive to the anxieties of and the dangers to victim(s) of domestic violence. Officers shall make every reasonable effort to preserve all relevant evidence and to immediately conduct a thorough follow-up investigation whenever this crime is brought to their attention.

It shall be the responsibility of command and supervisory officers to ascertain that a reported domestic violence crime is properly documented and that a priority follow-up investigation is completed as expeditiously as possible in an attempt to identify and charge the person(s) responsible for the crime.

### Explanation and Definition of Crime

The crime of domestic violence has been enacted into the Washington Criminal Code, Chapter 10.99, with the stated legislative intent that criminal laws be enforced without regard to whether the persons involved are or were married, cohabiting or involved in a relationship.

1. "Cohabitant" means a person who is married to or who is cohabiting with a person as husband and wife at the present time or at

some time in the past. Any person who has one or more children in common with another person, regardless of whether they have been married or living together at the time, shall be treated as cohabitant.

2. "Domestic violence" includes but is not limited to any of the following crimes when committed by one cohabitant against another:

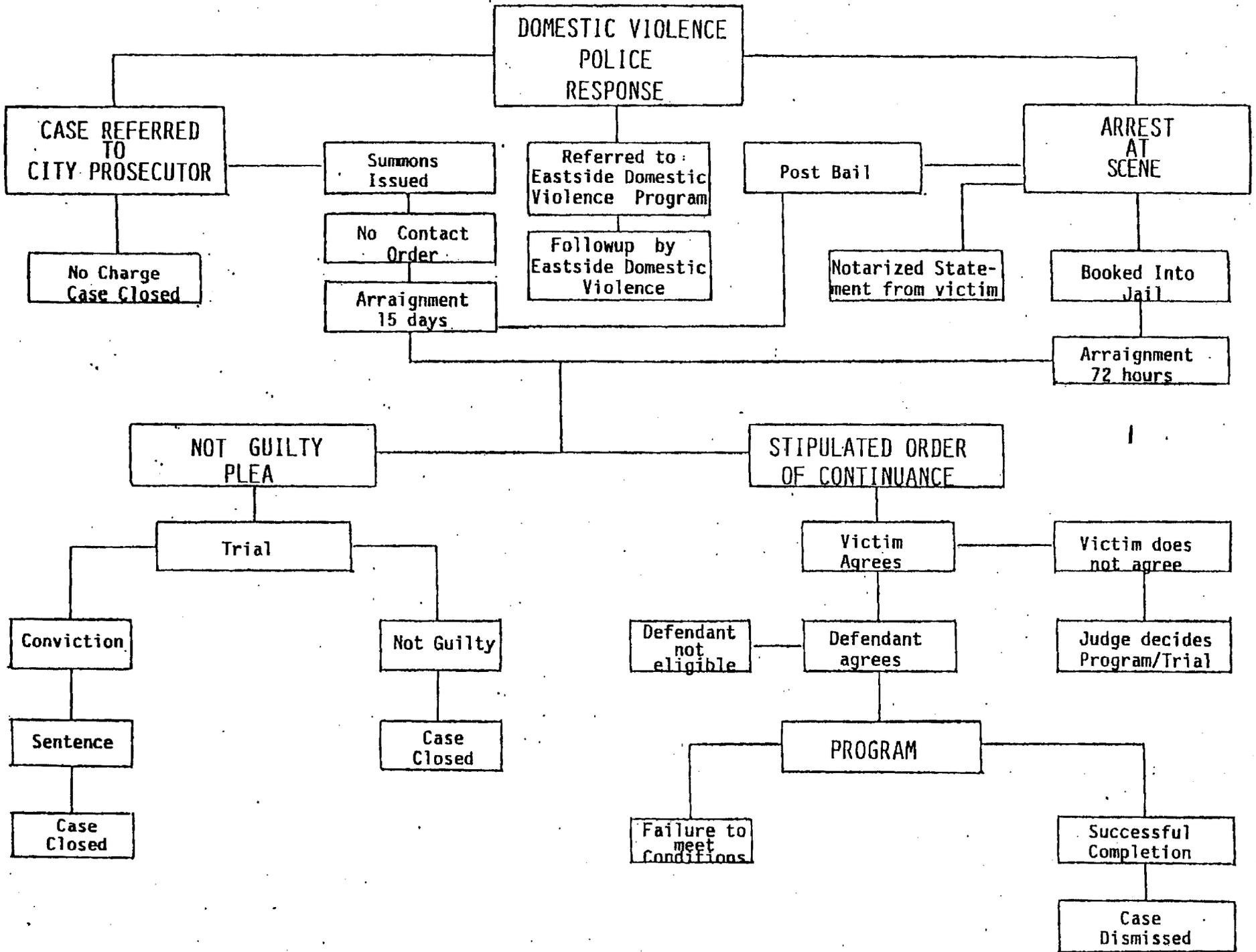
- (a) Assault in the first degree (RCW 9A.36.010);
- (b) Assault in the second degree (RCW 9A.36.020);
- (c) Simple assault (RCW 9A.36.040);
- (d) Reckless endangerment (RCW 9A.36.050);
- (e) Coercion (RCW 9A.36.070);
- (f) Burglary in the first degree (RCW 9A.52.020);
- (g) Burglary in the second degree (RCW 9A.52.030);
- (h) Criminal trespass in the first degree (RCW 9A.52.070);
- (i) Criminal trespass in the second degree (RCW 9A.52.080);
- (j) Malicious mischief in the first degree (RCW 9A.48.070);
- (k) Malicious mischief in the second degree (RCW 9A.48.080);
- (l) Malicious mischief in the third degree (RCW 9A.48.090);
- (m) Kidnapping in the first degree (RCW 9A.40.020);
- (n) Kidnapping in the second degree (RCW 9A.40.030);
- (o) Unlawful imprisonment (RCW 9A.40.040);
- (p) Rape in the first degree (RCW 9A.44.040); and
- (q) Rape in the second degree (RCW 9A.44.050).

3. "Victim" means a cohabitant who has been subjected to domestic violence.

How does the program work? The best indicator is that our reported assaults in 1983 increased by a substantial 39% and while we are not normally pleased with a crime increase, in this instance we were delighted. Why? Because our priority attention to domestic violence is paying-off in victims coming forward to seek help and they are being given effective assistance by knowledgeable professionals with a new dedication to serving their special needs. As was the case with rape some eight years ago now, domestic violence is finally receiving the attention

which it so desperately deserves and we look forward to a continuing statistical increase in assaults until every insidious case of abuse within the privacy of the home has been brought out of the family closet!

Footnote: The U.S. Attorney General's Task Force on Family Violence received testimony on this program at their January 1984 hearings in Seattle and it will be addressed in their final report.



**Phil Talmadge, Chairman**

Jerry Hughes, Vice Chairman  
Dick Hemstad, Ranking Minority Member  
George Clarke  
George Fleming  
Jeannette Hayner  
Irving Newhouse  
Alan Thompson  
Al Williams  
Dianne Woody



**Washington State Senate**  
48th Legislature  
1988 Session

435 Public Lands Building  
Olympia, Washington 98504  
(206) 758-7719

## **SENATE JUDICIARY COMMITTEE**

### MEMORANDUM

DATE: September 17, 1984  
TO: Senator Phil Talmadge  
FROM: Kyle Aiken *KA*  
SUBJECT: Domestic Violence Law

At your request, I contacted a few prosecutors and the Shelter Network to find out what charges are being filed in the arrests made under the new domestic violence protection law. There are two charges possible, simple assault and felony assault. Of all the arrests, it is estimated that charges are filed in one third of the cases. Of those one third, roughly 90 percent are simple assault and 10 percent felony assault.

The problem of the day with that bill is that women who are using self defense during domestic violence are also being arrested. The number is estimated to be one-third of all the people arrested under the act. This problem is probably attributable to police protocol rather than to the legislation. It is not a problem in Oregon where the language is similar. The legislation directs that if a police officer finds probable cause that an assault has occurred in the preceding four hours, he or she must make an arrest. Self defense is not an assault.

I think you might want to use the following statistics when discussing the bill:

1. Victims of family violence are twice as likely to be assaulted again if police do not arrest the attacker. (Justice Department Report conducted by the Police Foundation)
2. The Police Foundation's Study in Minneapolis showed that in 35 percent of the cases where police did not make an arrest, victims suffered a repeat attack within six months. When police made an arrest, only 19 percent of the victims reported repeated violence.

3. Arrest appeared to have no effect on the stability of the couple's relationship. A majority split up during the follow-up period no matter what the police did. (Police Foundation Study)
4. In the Minneapolis study, recidivism rates, measured from official police records, were 10 percent in the arrest cases, 17 percent in the mediation cases and 24 percent in the separation cases. The report concludes that "Despite all cautions, it is clear that the recidivism measure is lowest when police make arrests."
5. The police have stated that it is often a waste to arrest because the woman will not follow through with the prosecution. The Abused Women's Project have found that 90 percent of the women they assist followed through with the case.
6. The Shelter Network studied compliance with the old domestic abuse law (Chapter 10.99 RCW). Their report will be released on October 3. It indicates that compliance with the old law (which encouraged arrest and provided no-contact orders) was poor; when I get the numbers, I will send them to you.
7. A study conducted in Oregon to assess the impact of their 1977 domestic violence law. In the pre-1977 period (1975-1977), there were 98 domestic homicides and 167 nondomestic homicides. In the post-1977 period (1978-1981) there were 89 domestic homicides and 239 nondomestic homicides. That represents a 10 percent decrease in domestic homicides following the implementation of the legislation while nondomestic homicides increased 10 percent.
8. Studies have shown that about half of the requests for police assistance arising in large urban areas are related to domestic violence situations. It has been reported that "up to 60 percent of all married women are subjected to physical violence by their husbands at some time during their marriage"; moreover 20 percent are beaten regularly.
9. A National District Attorney's Association report cited a Kansas City police study which found that in 85 percent of the homicide and aggravated assault cases in 1972-1973, police had been called to the house one time before the occurrence. In almost 50 percent of the cases the police had responded to five or more prior domestic disturbance calls.

**F**

FINAL BILL REPORT

SSB 5142

C 280 L 87

BY Senate Committee on Judiciary (originally sponsored by Senators Talmadge, Lee, Bottiger, Moore and Rinehart)

Providing protection from unlawful harassment.

Senate Committee on Judiciary

House Committee on Judiciary

SYNOPSIS AS ENACTED

BACKGROUND:

Washington's criminal harassment statute, RCW 9A.46, was intended to make certain kinds of harassment illegal. Toward that end, RCW 9A.46 makes it a crime to threaten to injure or harm another.

Law enforcement authorities report they are unable to make arrests in many harassment cases because RCW 9A.46 applies only where an express threat is made to the victim. Often the victim is subjected to a continued pattern of serious harassment, but no arrest is possible because no specific threat of harm is made.

SUMMARY:

This chapter is intended to provide victims of unlawful harassment with a speedy and inexpensive method of obtaining protection orders preventing unwanted contact between the victim and the harasser. "Unlawful harassment" is defined as a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or harasses such person, and which serves no legitimate or lawful purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause such distress to the victim. A set of factors the court must consider in deciding whether the conduct serves any legitimate or lawful purpose is provided. Nothing in the chapter is to be construed to infringe on any constitutionally protected right, including freedom of speech and freedom of assembly.

A victim of unlawful harassment may petition the superior courts for a civil antiharassment protection order. At the time the

petition is filed, the victim can request the court to issue a temporary antiharassment protection order to remain in effect for up to 14 days.

A hearing must be held on the victim's petition within 14 days after it is filed. If the court finds that unlawful harassment has taken place, it shall issue a civil antiharassment protection order which can remain in effect for up to one year.

A respondent who willfully disobeys an antiharassment protection order is guilty of a gross misdemeanor and may be subject to contempt of court penalties. The municipal and district courts have jurisdiction of any criminal actions brought under this chapter.

In granting antiharassment protection orders, the court is given broad discretion to grant relief, including orders restraining the respondent from contacting or following the petitioner and requiring the respondent to stay a stated distance from the petitioner's residence or work place.

A petitioner may not obtain a third temporary antiharassment protection order if the petitioner has previously obtained two such orders but has failed to obtain a permanent antiharassment protection order unless good cause for such failure can be shown.

VOTES ON FINAL PASSAGE:

Senate	47	0	
House	86	11	(House amended)
Senate	47	0	(Senate concurred)

EFFECTIVE: July 26, 1987

# FISCAL NOTE

REQUEST NO. 1

BILL NO. S 130	RESPONDING AGENCY Office of the Administrator for the Courts	
TITLE  Protection from Harassment	PREPARED BY Mark Johnson	DATE January 12, 1987
	TITLE Financial Services Director	SCAN 234-3365
	REVIEWED BY OFM <i>J. Masten</i>	DATE 01-12-86

Fiscal impact of the above legislation on Washington State government is estimated to be:

- NONE  
 AS SHOWN BELOW

Figures in parentheses represent reductions. Detail supporting these estimates is contained in Form FN-2.

**Also See Local Gov't FN**

First Biennium 19 87 — 19 89

REVENUE TO:	FUND	CODE	SOURCE TITLE	CODE	1ST YEAR	2ND YEAR	TOTAL	FIRST SIX YEARS
GENERAL FUND -- STATE	001				0	0	0	0
GENERAL FUND -- FEDERAL	001				0	0	0	0
OTHER *					0	0	0	0
					0	0	0	0
<b>TOTALS</b>					0	0	0	0

EXPENDITURES FROM:	FUND	CODE	1ST YEAR	2ND YEAR	TOTAL	FIRST SIX YEARS
GENERAL FUND -- STATE	001		0	0	0	0
GENERAL FUND -- FEDERAL	001		0	0	0	0
OTHER *						
<b>TOTALS</b>			0	0	0	0

\* Remove all other, including non-appropriated funds and/or accounts within the General Fund.

EXPENDITURES BY OBJECT OR PURPOSE:	1ST YEAR	2ND YEAR	TOTAL	FIRST SIX YEARS
FTE STAFF YEARS	0	0	0	0
SALARIES AND WAGES				
PERSONAL SERVICE CONTRACTS				
GOODS AND SERVICES				
TRAVEL				
EQUIPMENT				
EMPLOYEE BENEFITS				
GRANTS AND SUBSIDIES				
INTERAGENCY REIMBURSEMENT				
DEBT SERVICE				
CAPITAL OUTLAYS				
<b>TOTALS</b>				

Check this box if the above legislation has cash flow impact per instructions:   
 Show cash flow impact on FN-2.

Check this box if the above legislation has fiscal impact on local governments:   
 Do not include local government impact on FN-1.

# FISCAL NOTE

REQUEST NUMBER 1

Office of the Administrator for the Courts

Responding Agency

Code No.

Bill No. S-130

January 12, 1987

Date Submitted

## Comments for the Fiscal Note on the Harrassment Bill: 4th draft S130

Senate Bill 130, 4th draft, proposes to have the Office of the Administrator for the Courts provide support to the trial court system by way of developing model forms and instructional brochures required under section 4(X) of this act. In our normal support for the trial court system we would also assist in the training of the court staff in handling these types of cases. 5

Since providing this type of service is an integral part of the Court Services and Education sections of the Office of the Administrator for the Courts, there would be no additional expenditures required to provide this support.

There will be some local government costs in the printing of the model forms, training time for staff, and travel costs to regional training sessions conducted by the Office of the Administrator for the Courts.

The bill allows for in forma pauperis filings, which are assumed to be the majority of the cases. It is further assumed that the additional revenues from persons using the regular \$70 civil filing fee would be immaterial to the state.

1692k

# LOCAL GOVERNMENT FISCAL NOTE

REQUEST NO. 87-1

*JA*

BILL NO. <b>S-532</b>	RESPONDING AGENCY Department of Community Development
Domestic Violence	PREPARED BY Leslie Romer
	DATE 1-12-87
	TITLE Local Government Fiscal Analyst
	S.F. AN 234-4948
	REVIEWED BY OFM <i>Candace Eperoth</i>
	DATE 1/12/87

Impact On Cities	Counties	Other
<input type="checkbox"/> All	<input checked="" type="checkbox"/> All	<input type="checkbox"/> _____
<input checked="" type="checkbox"/> Other _____	<input type="checkbox"/> Other _____	<input type="checkbox"/> _____

Prepared in cooperation with  
(Agency / Organizations)

S-532 amends RCW 26.50.020 to increase the jurisdiction of district and municipal courts in domestic violence prevention. These courts currently have authority to issue and enforce temporary orders for protection against domestic violence. Full hearings are to be held only in superior court. This bill would extend their jurisdiction to include violations of restraining orders excluding respondents from residences. Current legislation limits jurisdiction over these violations to superior courts. As the proposed legislation would reduce the superior court workload while it increases that of district and municipal courts, it can be expected to have minor fiscal impacts on local jurisdictions. One half of superior court judges' salaries and all of their benefits are funded by the state. All district and municipal court costs are borne by local governments. There are 39 superior courts and 64 district courts in the state. There are 132 municipal courts administered by cities and 95 municipal courts administered under contracts with district courts.

Because these filings comprise a very small percentage of the court workload, and the shift will be spread among a large number of limited jurisdiction courts, it is not likely that a measurable fiscal impact will be experienced.

# LOCAL GOVERNMENT FISCAL NOTE

REQUEST NO. 87-2

BILL NO <p style="text-align: center;">S-130, 4th draft</p>	RESPONDING AGENCY Department of Community Development
TITLE <p style="text-align: center;">Protection from harassment</p>	PREPARED BY <p style="text-align: center;">Leslie Romer</p>
	TITLE <p style="text-align: center;">Local Government Fiscal Analyst</p>
	REVIEWED BY OFM <p style="text-align: center;"><i>Candace Epereth</i></p>
DATE 1-12-87	
SCAN 234-4948	
DATE 1/12/87	

Impact On Cities  <input type="checkbox"/> All  <input checked="" type="checkbox"/> Other	Counties  <input checked="" type="checkbox"/> All  <input type="checkbox"/> Other	Other  <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
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**Also See State Gov't FN**

Prepared in cooperation with  
(Agency Organizations)

S-130 adds a new chapter to Title 10RCW, establishing civil antiharassment protection orders and the procedures for their administration. The bill requires that court clerks' offices make simplified filing forms and instructional brochures available to the public. Model forms and brochures are to be developed by the Administrator for the Courts.

The restraining orders are to be delivered by the sheriff or municipal peace officer to the respondent personally, unless the petitioner prefers to have a private party serve the court order. Sheriffs and municipal police may collect standard service and mileage fees for serving these orders. The bill also adds violation of court antiharassment orders to the list of crimes for which a peace officer can make an arrest without a warrant.

This legislation is thought to be modelled after the domestic violence prevention legislation, and is expected to have some of the same impacts on local legal systems. County clerks report that filings of domestic violence restraining orders require 1-3 hours of their time per case. Antiharassment filing forms are expected to be shorter and simpler, but still require some assistance from court clerk staff. The majority of petitioners in domestic violence cases file as paupers, thus contributing to court system costs. It is thought that a lower percentage of antiharassment petitions would be filed by paupers. No firm estimates on the number of harassment cases to be anticipated are available, but local court officials think there may be as many harassment cases as domestic violence filings. No cost estimates can be developed at this time.

TESTIMONY BY KARIL KLINGBELL  
ASSOCIATE PROFESSOR AND  
DIRECTOR OF SOCIAL WORK  
HARBORVIEW MEDICAL CENTER

BEFORE  
SENATE JUDICIARY COMMITTEE  
ON  
CIVIL HARRASSMENT  
RCW 10.31.100

JANUARY 13, 1987  
CHERBURG BUILDING  
FOURTH FLOOR  
OLYMPIA, WASHINGTON

GOOD MORNING! I'M KARIL KLINGBEIL, ASSOCIATE PROFESSOR AT THE UNIVERSITY OF WASHINGTON AND DIRECTOR OF SOCIAL WORK AT HARBORVIEW MEDICAL CENTER.

I AM PLEASED TO PRESENT TESTIMONY IN FAVOR OF THE PROPOSED CIVIL HARRASSMENT LEGISLATION DURING THIS PUBLIC REVIEW AND COMMENT.

FOR ALMOST TWENTY YEARS, I HAVE TAUGHT COURSES, PRESENTED WORKSHOPS AND SEMINARS AND WORKED CLINICALLY IN THE FIELD OF INTERPERSONAL VIOLENCE IN THIS STATE AND ACROSS THE COUNTRY. AS A RESEARCHER AND CLINICIAN, I HAVE WORKED WITH BOTH VICTIMS (OR SURVIVORS AS WE NOW REFER TO THEM) AS WELL AS PERPETRATORS OF VIOLENT ACTS.

I JOINED THE SEATTLE POLICE DEPARTMENT HARRASSMENT TASK FORCE AT ITS INCEPTION LAST YEAR FOLLOWING THE EIA SUNDBY MURDER. THE PURPOSE OF THE TASK FORCE WAS TO ASSIST THE POLICE DEPARTMENT IN EVALUATING THEIR RESPONSE TO THE SUNDBY CASE, TO OFFER SUGGESTIONS FOR IMPROVED RESPONSES AND TO EVALUATE PERMANENT SOLUTIONS INCLUDING THE PROPOSED LEGISLATION TO ASSIST THE SPD AND COMMUNITY WITH EARLY DETECTION AND KNOWLEDGE OF HARRASSING BEHAVIORS.

THESE TASKS HAVE BEEN COMPLETED AND A CREATIVE AND EFFECTIVE TELEPHONE RESPONSE UNIT NOW AUGMENTS THE 911 EMERGENCY CALL TELEPHONE SERVICE; BUT ITS IMPORTANT TO NOTE THE TASK FORCE, CHAIRED BY CHIEF NOREEN SKAGAN, CONTINUES TO MEET MONTHLY. WE REVIEW "HARRASSMENT CASES" AND CONTINUE TO SEEK INNOVATIVE SOLUTIONS REGARDING PUBLIC EDUCATION AND EARLY DETECTION OF HARRASSMENT BEHAVIOR WHICH WE KNOW CLINICALLY LEADS TO MANY CRIMES INCLUDING MURDER AND HOMICIDES.

THIS MORNING YOU WILL HEAR TESTIMONY FROM OTHERS, ESPECIALLY THOSE IN THE CRIMINAL JUSTICE SYSTEM. I WANT TO MAKE SOME QUITE SPECIFIC POINTS ABOUT WHY CLINICALLY WE NEED THIS LEGISLATION AND WHAT IT WILL DO TO PREVENT CRIME.

HARRASSING BEHAVIOR INCLUDES BOTH WORDS AND ACTIONS DESIGNED TO COERCE, CONTROL, INTIMIDATE AND/OR HUMILIATE OTHERS. IT OFTEN STARTS QUITE INSIDIOUSLY, ESCALATES THROUGH REPEATED PATTERNS UNTIL IT IS RECOGNIZED THROUGH STALKING, PREDATORY AND GROSSLY OFFENSIVE ACTS AND CAN LEAD TO OVERT VIOLENCE ENDING IN MURDER. BEHAVIORS, THUS, ARE ON A CONTINUUM AND OFTEN IN A DEFINITIVE PATTERN OR "MO" SPECIFIC TO THE OFFENDER.

WE HAVE BEEN ABLE TO DEFINE AND ARTICULATE A PROFILE OF BEHAVIORS OF HARRASSERS AND I HAVE TESTIFIED AT PREVIOUS HEARINGS ON SPECIFIC CHARACTERISTICS. I'D BE PLEASED TO ENUMERATE THOSE CHARACTERISTICS IF THE COMMITTEE WISHES - BUT FOR PURPOSES OF THIS TESTIMONY TODAY I WISH TO POINT THAT WE DIFFERENTIATE QUITE CLEARLY HARRASSING BEHAVIOR FROM THE USUAL "BOY-GIRL" DATING, "NORMAL" INTIMATE RELATIONSHIPS WHICH ALL OF US HAVE EXPERIENCED. FORTUNATELY, MOST INDIVIDUALS CAN STOP OR TERMINATE UNWANTED RELATIONSHIPS AND THE OTHER PARTY RESPECTS THAT DECISION - OR RELATIONSHIPS ARE MUTUALLY TERMINATED.

NOT SO, HARRASSING BEHAVIOR. ONE OF THE CHARACTERISTICS OF HARRASSERS IS THAT THEY DO NOT RESPECT "SOCIAL CODES" OR SOCIAL "CUES" - THEY DO NOT RESPECT "NO!" THEY CONTINUE TO VERBALIZE OR ACT TO COERCE, INTIMIDATE AND CONTROL. IN OTHERWORDS, THESE BEHAVIOR PATTERNS GO WELL BEYOND "PUPPY LOVE," FONDNESS AND OTHER MORE POSITIVE AND ACCEPTABLE FORMS OF INTIMACY. PERHAPS SAYING THEY GO "BEYOND" ISN'T QUITE APPROPRIATE - THE BEHAVIORS ARE IN DIRECT CONTRADICTION TO THE MORE POSITIVE AND ACCEPTABLE FORMS OF INTIMACY. THESE

BEHAVIORS SERIOUSLY ALARM AND ANNOY, SERIOUSLY FRIGHTEN OTHERS AND CAUSE SUBSTANTIAL EMOTIONAL DISTRESS. SOME VICTIMS WITH WHO I AM PROFESSIONALLY ACQUAINTED HAVE LOST THEIR JOBS, BEEN UNABLE TO LEAVE THEIR HOME OR DRIVE A CAR FOR SUBSTANTIVE PERIODS OF TIME, SUFFERED SEVERE DISRUPTION IN THEIR PERSONAL RELATIONSHIPS AND OTHER MORE GREIVIOUS SITUATIONS RESULTING IN DIAGNOSIS OF POST TRAUMATIC STRESS DISORDER - REQUIRING LONG TERM COUNSELING... THEREFORE THESE VICTIMS OFTEN SUFFER SIGNIFICANT FINANCIAL LOSS.

THIS PROPOSED LEGISLATION OFFERS PREVENTION STRATEGIES BEFORE THE BEHAVIORS ESCALATE TO THE CRISIS OF TERRORISM WHETHER ITS DOMESTIC VIOLENCE COVERED UNDER ANOTHER STATUTE OR STRANGER-TO-STRANGER TERRORISM - THIS LEGISLATION LITERALLY AIMS AT:

- 1) PREVENTING HARRASSMENT FROM OCCURRING
- 2) PREVENTING THE PHYSICAL AND EMOTIONAL PAIN AND ABUSE OF VICTIMS AND THEIR FAMILIES
- 3) HAVING THE CAPABILITY OF PREVENTING DEATH
- 4) PREVENTS UNNECESSARY COSTS OF HEALTHCARE DOLLARS - THROUGH EITHER STATE FUNDED VICTIMS COMP OR OTHER PRIVATE THIRD PARTY PAYORS
- 5) PREVENTS UNNECESSARY AND FRUSTRATING TIME SPENT BY CRIMINAL JUSTICE SYSTEM STAFF (911 OPERATORS, PATROLMEN, DETECTIVES, ETC.), AS WELL AS HEALTH CARE PERSONNEL

THIS LEGISLATION FURTHER OFFERS AN INEXPENSIVE, ACCESSIBLE TOOL TO ASSIST VICTIMS - TO EMPOWER THEM TO ACT INSTEAD OF FURTHERING THE VICTIMIZATION PROCESS, THE HELPLESSNESS AND "OUT-OF-CONTROL" FEELINGS UNIVERSALLY EXPERIENCED.

IF THE COMMUNITY HAS SUCH A PIECE OF LEGISLATION AVAILABLE, IT CREATES A COMMUNITY SYSTEM OF HELP, A NETWORK OF EDUCATION TO ASSIST AND ENCOURAGE VICTIMS TO SEEK ASSISTANCE EARLY ON IN THE HARRASSING PROCESS. TO ACT IS TO TAKE CHARGE OF ONE'S OWN LIFE AND TO ABANDON THE EMBARRASSMENT AND SHAME, THE MINIMIZATION AND DENIAL FREQUENTLY CITED BY VICTIMS. EIA SUNDBY WAS A CLASSIC CASE OF MINIMIZING THE DANGER AND LEGALITY OF THE SITUATION AS SHE FREQUENTLY APOLOGIZED FOR CALLING THE 911 OPERATOR - SHE APOLOGIZED THE DAY SHE DIED.

I STRONGLY URGE YOUR SUPPORT OF THIS IMPORTANT LEGISLATION - IT IS THE NECESSARY COMPONENT TO THE CRIMINAL LEGISLATION THAT WE NEED TO TURN THE CORNER ON THE ESCALATION OF VIOLENT CRIME. HAD THIS BEEN INACTED EARLIER IT MIGHT HAVE PREVENTED EIA SUNDBY'S DEATH AS WELL AS THE COED FROM EVERGREEN COLLEGE WHO WAS MURDERED TWO YEARS AGO.

THANK YOU!

Phil Taimadge, Chairman

Washington State Senate  
49th Legislature

Stuart Halsan, Vice Chairman  
Irv Newhouse, Ranking Minority Member  
Arlie Dejarnatt  
George Fleming  
Janette Hayner  
Bob McCaslin  
Jack Metcalf  
Ray Moore  
Brad Owen  
Kent Pullen  
Alan Thompson  
Al Williams

## SENATE JUDICIARY COMMITTEE



435 John A. Cherberg Building  
Olympia, Washington 98504  
(206) 786-7462

### CIVIL ANTIHARASSMENT STATUTE S-130/87

#### SENATE JUDICIARY COMMITTEE

#### SENATE STAFF:

Debra Cheatum (786-7418)

#### BACKGROUND:

Washington's criminal harassment statute, RCW 9A.46, was intended to make certain kinds of harassment illegal. Toward that end, RCW 9A.46 makes it a crime to threaten to injure or harm another.

Law enforcement authorities report that they are unable to make arrests in many harassment cases because RCW 9A.46 applies only where an express threat is made to the victim. Often the victim is subjected to a continued pattern of serious harassment, but no arrest is possible because no specific threat of harm is made.

California enacted a civil antiharassment statute in 1979 (California Code of Civil Procedure, section 527.6) which allows a harassment victim to petition the courts for an order prohibiting further harassment. Law enforcement authorities and victim advocates have expressed support for a similar civil antiharassment statute in Washington which would give all harassment victims, not just those who have been expressly threatened, access to court protection.

#### SUMMARY:

This chapter is intended to provide victims of unlawful harassment with a speedy and inexpensive method of obtaining protection orders preventing unwanted contact between the victim and the perpetrator. "Unlawful harassment" is defined as a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or harasses such person, and which serves no legitimate or lawful purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the victim. A set of factors the court must consider in deciding whether the conduct serves any legitimate or lawful purpose is provided.

A victim of unlawful harassment may petition the superior courts for a civil antiharassment protection order. At the time the petition is filed, the victim can also request the court to issue a temporary antiharassment protection order which will remain in effect for up to fifteen days.

A hearing must be held on the victim's petition within fifteen days after it is filed. If the court finds that unlawful harassment has taken place, it shall issue a civil antiharassment protection order which can remain in effect for up to one year.

A respondent who willfully disobeys an antiharassment protection order will be guilty of a gross misdemeanor and may also be subject to contempt of court penalties. The municipal and district courts shall have jurisdiction of any criminal actions brought under this chapter.

DECLARATION OF SERVICE

On said day stated below, I deposited into the U.S. Mail a true and accurate copy of the Brief of Respondent in Court of Appeals Cause No. 66534-1-I to the following parties:

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Original and copy filed with:

Court of Appeals, Divisions I  
Clerk's Office

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2011 JUL 22 PM 1:12

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

DATED: July 22, 2011, at Tukwila, Washington.

  
\_\_\_\_\_  
Christine Jones  
Talmadge/Fitzpatrick