

CHAPTER 3

THE LEGISLATIVE RESPONSE TO DOMESTIC VIOLENCE

This chapter offers a brief overview of the available legal options as responses to domestic violence. Some of these options are covered in detail in later portions of this domestic violence manual, while others are mentioned only briefly in order to distinguish them from the subjects covered in more detail.

I. WASHINGTON’S STATUTORY FRAMEWORK

Washington State has evinced a “clear policy to prevent domestic violence....” *Danny v. Laidlaw Transit Services*, 165 Wn. 2d 200, 198 P.3d 128 (2008). Domestic violence statutes are interspersed throughout the Revised Code of Washington (RCW), with the primary purpose to protect the domestic violence victim and treat domestic violence as a serious crime.

In addition to criminalizing domestic violence and providing for domestic violence shelters, the Washington Legislature has recognized the economic barriers to escaping domestic violence by adopting the Family Violence Option as part of Washington’s WorkFirst (welfare-to-work) program¹ and passing legislation which provides that domestic violence victims may take time off from work to address the impacts of domestic violence, sexual assault, or stalking,² and continue to be eligible for unemployment compensation if the victim left their job to protect themselves from abuse.³ The Washington Legislature has also recognized the crucial need for victims to access safe housing by enacting protections for victims against eviction due to the actions of their abusers and other adverse rental decisions in Washington’s Residential Landlord-Tenant Act.⁴

II. DOMESTIC VIOLENCE AS A CRIME

The Washington statutes do not define a separate crime of domestic violence, as is done in some states. With limited exceptions, the Washington approach is to rely on the existing criminal statutes, but to supplement them with special procedures in cases involving domestic violence. As a result of statutory changes in 2010 that allow prior domestic violence–related misdemeanor offenses to be scored in felony sentencing, the status of the relationship should be alleged in the information and found by the jury or the court.⁵ For other purposes, the status of the relationship need not be alleged in the information or found by the jury. *State v. Felix*, 125 Wn. App. 575, 105 P.3d 427 (2005) (Constitutional analysis); *State v. Goodman*, 108 Wn. App. 355, 30 P.3d 516 (2001) (Statutory analysis). Key statutory provisions are set forth below.

¹ Laws of 1997, ch. 58 § 103; WAC 388-61-001.

² Laws of 2008, ch. 286, §1 ([Chapter 49.76 RCW](#)).

³ Laws of 2002, ch. 8 § 1

⁴ Laws of 2004, ch. 17 § 1

⁵ Laws of 2010, ch. 274, §§ 401-407

A. Legislative goals

The purpose and intent of the domestic violence legislation is stated in [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 in the past twenty years 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.

B. General guidelines

The legislature has made specific orders and prohibitions affecting courts in [RCW 10.99.040\(1\)](#):

- (1) Because of the serious nature of domestic violence, the court in domestic violence actions:
 - (a) Shall not dismiss any charge or delay disposition because of concurrent dissolution or other civil proceedings;
 - (b) Shall not require proof that either party is seeking a dissolution of marriage prior to instigation of criminal proceedings;
 - (c) Shall waive any requirement that the victim's location be disclosed to any person, other than the attorney of a criminal defendant, upon a showing that there is a possibility of further violence:
PROVIDED, That the court may order a criminal defense attorney not to disclose to his or her client the victim's location; and
 - (d) Shall identify by any reasonable means on docket sheets those criminal actions arising from acts of domestic violence.

C. Statutory Definitions

[RCW 10.99.020](#) establishes definitions for domestic violence proceedings. Over the years these definitions have been periodically modified, so practitioners and the court may need to refer to prior versions.

- (1) “Intimate partners” means: (a) Spouses or domestic partners; (b) former spouses or former domestic partners; (c) persons who have a child in common regardless of whether they have been married or have lived together at any time; (d) adult persons presently or previously residing together who have or have had a dating relationship; (e) persons 16 years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship; or (f) persons 16 years of age or older with whom a person 16 years of age or older has or has had a dating relationship. [RCW 10.99.020\(8\)](#).
- (2) “Family or household members” means: (a) Adult persons related by blood or marriage; (b) adult persons who are presently residing together or who have resided together in the past; and (c) persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren. [RCW 10.99.020\(7\)](#).

PRACTICE NOTE: Although prison cell mates technically may come within this definition, the Court of Appeals has suggested they would not favor their inclusion: “We question the wisdom of considering inmates in a penal institution—at least those who are not ‘involved in a relationship’—as cohabiting adults for the purposes of this act.” *State v. Barragan*, 9 P.3d 942, 948 n.1, 102 Wn. App. 754, 763 n.1 (2000).

PRACTICE NOTE: A domestic relationship does not exist between an adult and his minor sister-in-law who does not reside with the family. *State v. Garnica*, 20 P.3d 1069, 1075, 105 Wn. App. 762, 773 (2001).

- (3) “Dating relationship” has the same meaning as in [RCW 7.105.010](#).

PRACTICE NOTE: A dating relationship is defined in [RCW 7.105.010\(8\)](#) as: “[A] social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) The length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties.”

- (4) “Domestic violence” includes but is not limited to any of the following crimes when committed either by (a) one family or household member against another family or household member, or (b) one intimate partner against another intimate partner:

- (i) Assault in the first degree ([RCW 9A.36.011](#));

- (ii) Assault in the second degree (RCW [9A.36.021](#));
- (iii) Assault in the third degree (RCW [9A.36.031](#));
- (iv) Assault in the fourth degree (RCW [9A.36.041](#));
- (v) Drive-by shooting (RCW [9A.36.045](#));
- (vi) Reckless endangerment (RCW [9A.36.050](#));
- (vii) Coercion (RCW [9A.36.070](#));
- (viii) Burglary in the first degree (RCW [9A.52.020](#));
- (ix) Burglary in the second degree (RCW [9A.52.030](#));
- (x) Criminal trespass in the first degree (RCW [9A.52.070](#));
- (xi) Criminal trespass in the second degree (RCW [9A.52.080](#));
- (xii) Malicious mischief in the first degree (RCW [9A.48.070](#));
- (xiii) Malicious mischief in the second degree (RCW [9A.48.080](#));
- (xiv) Malicious mischief in the third degree (RCW [9A.48.090](#));
- (xv) Kidnapping in the first degree (RCW [9A.40.020](#));
- (xvi) Kidnapping in the second degree (RCW [9A.40.030](#));
- (xvii) Unlawful imprisonment (RCW [9A.40.040](#));
- (xviii) Violation of the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, a protected party's person, or a protected party's vehicle (chapter [7.105](#) RCW, or RCW [10.99.040](#), [10.99.050](#), [26.09.300](#), *[26.10.220](#), [26.26B.050](#), [26.44.063](#), [26.44.150](#), or [26.52.070](#), or any of the former RCW [26.50.060](#), [26.50.070](#), [26.50.130](#), and [74.34.145](#));
- (xix) Rape in the first degree (RCW [9A.44.040](#));
- (xx) Rape in the second degree (RCW [9A.44.050](#));
- (xxi) Residential burglary (RCW [9A.52.025](#));
- (xxii) Stalking (RCW [9A.46.110](#)); and
- (xxiii) Interference with the reporting of domestic violence RCW [9A.36.150](#)).

- (5) “Victim” means a family or household member or an intimate partner who has been subjected to domestic violence. [RCW 10.99.020\(10\)](#).

PRACTICE NOTE: Special issues concerning prosecutions for property offenses where the parties are married are discussed in Chapter 5, VIII

In the civil context, a more general definition is provided in [RCW 7.105.010\(9\)](#), which defines domestic violence as:

- (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault; nonconsensual

sexual conduct or nonconsensual sexual penetration; coercive control; unlawful harassment; or stalking of one intimate partner by another intimate partner; or

- (b) Physical harm, bodily injury, assault, or the infliction of fear of physical harm, bodily injury, or assault; nonconsensual sexual conduct or nonconsensual sexual penetration; coercive control; unlawful harassment; or stalking of one family or household member by another family or household member.

D. Interference with the Reporting of a Domestic Violence Offense

In 1996, the legislature adopted [RCW 9A.36.150](#), Interfering with the Reporting of Domestic Violence. That section provides:

- (1) A person commits the crime of interfering with the reporting of domestic violence if the person:
 - (a) Commits a crime of domestic violence, as defined in [RCW 10.99.020](#); and
 - (b) Prevents or attempts to prevent the victim of or a witness to that domestic violence crime from calling a 911 emergency communication system, obtaining medical assistance, or making a report to any law enforcement official.
- (2) Commission of a crime of domestic violence under subsection (1) of this section is a necessary element of the crime of interfering with the reporting of domestic violence.

In *State v. Nonog*, 169 Wn.2d 220, 230-31, 237 P.3d 250 (2010), the Supreme Court held that although the specific domestic violence crime was not specifically set out in the interference count, the defendant was on notice of what offense was listed by reading all the counts as a whole. Commission of a crime of domestic violence under subsection (1) of this section is a necessary element of the crime of interfering with the reporting of domestic violence.⁶

In *State v. Clowes*, 104 Wn. App. 935, 945-47, 18 P. 3d 596 (2001) the defendant appealed from his conviction for two offenses: violation of a no-contact order and interfering with the reporting of a domestic violence offense. In *Clowes*, the interference charge was dismissed because the charging document was found to be insufficient. The no-contact order conviction was reversed for an instructional error. The court rejected the defense argument that reversal of the no-contact order count provided an independent

⁶ Note: The case was distinguished from *State v. Holcomb*, 200 Wn. App. 54, P.3d 412 (2017), where the information did not apprise the defendant that assault in the fourth degree was the underlying domestic violence crime to be proved.

basis for reversing the interfering with reporting a domestic violence offense count. The court concluded that [RCW 9A.36.150](#) (interfering with reporting a domestic violence offense) does not require a conviction of a separate domestic violence offense and that so long as sufficient evidence of the commission of such an offense is contained in the record, the conviction for interfering with reporting a domestic violence offense can stand.

E. Mandatory Arrest Without Warrant

A police officer with probable cause to believe that one of a variety of criminal and civil protection orders (excluding antiharassment protection orders) has been violated OR that an assault between family or household members has occurred within the previous four hours is required to arrest the adult perpetrator. [RCW 10.31.100\(2\)](#). Even when arrest is not required, the officer has discretion to effect a warrantless arrest in virtually any domestic violence situation. [RCW 10.31.100\(1\)](#) authorizes arrests without warrants for all felonies and for misdemeanors that involve violence or threats of violence to persons or property, the wrongful taking of property, and acts of criminal trespass. This is discussed in greater detail in Chapter 4, Section I.

III. PROVISIONS CONCERNING THE POSSESSION OF FIREARMS

Domestic violence victims are at an increased risk when their abuser has access to firearms. “Firearms are used to commit more than half of all intimate partner homicides in the United States. When an abusive partner has access to a gun, a domestic violence victim is 11 times more likely to be killed.” [RCW 7.105.900\(3\)\(a\)](#).

PRACTICE NOTE: On November 22, 2022, the Division II Court of Appeals issued its decision in *State v. Flannery* concerning the constitutionality of Orders to Surrender Weapons. While a criminal case, the holding made direct reference to civil protection orders under RCW 26.50 and RCW 7.105. *See* <https://www.courts.wa.gov/opinions/?fa=opinions.disp&filename=556821MAJ>. As of the time of publication of the updates to this chapter, the full impact of this case on Orders to Surrender Weapons and Compliance Hearings remained uncertain.

A. Authority of Court to Prohibit a Perpetrator from Possessing a Firearm or Other Dangerous Weapon while Issuing Civil Protection Orders or Criminal No Contact Orders for the Protection of the Victim

[RCW 9.41.800](#) contains broad authority for a court to prohibit the possession of and immediate surrender of firearms or other dangerous weapons in conjunction with issuing an order for the protection of a domestic violence victim. Almost all conceivable orders come within the scope of this statute ([RCW 7.105](#), [9A.46.080](#), [10.99.040](#), [10.99.045](#), [26.09.050](#), [26.09.060](#), [26.26B.020](#), [26.26A.470](#)). The statute mandates certain circumstances which require the court to prohibit or surrender weapons.

If a court finds by *a preponderance of the evidence*, that a party has either used,

displayed, or threatened to use a firearm or other dangerous weapon in a serious felony offense, OR previously committed an offense which makes a person ineligible to possess a firearm, the court *shall*:

- (a) Require the party to immediately surrender any firearm or other dangerous weapon;
- (b) Require the party to immediately surrender any concealed pistol license issued under [RCW 9.41.070](#);
- (c) Prohibit the party from accessing, having in his or her custody or control, possessing, purchasing, receiving, or attempting to purchase or receive, any firearms or other dangerous weapons;
- (d) Prohibit the party from obtaining or possessing a concealed pistol license; and
- (e) Other than for ex parte temporary protection orders, unless the ex parte temporary protection order was reissued after the party received notice and had an opportunity to be heard, direct law enforcement to revoke any concealed pistol license issued to the party. [RCW 9.41.800\(1\)\(a\)-\(e\)](#).

PRACTICE NOTE: Refer to Attachment 2 to Chapter 8, which contains a grid with the standards for issuance of an OTSW.

The court *shall* also issue all of the above restrictions (except subsection (e)) during any period of time where a party is subject to a court order issued under chapter 7.105, 9A.46, 10.99, 26.09, 26.26A, or 26.26B RCW so long as that underlying order:

- (a) was issued after a party received actual notice and had an opportunity to participate,
- (b) restrains the party from harassing, stalking, or threatening an intimate partner of the party, the protected person, or child of the intimate partner, party, or protected person, or engaging in other conduct that would place an intimate partner or protected person in reasonable fear of bodily injury to the intimate partner, protected person, or child; and
- (c) includes a finding that party represents a credible threat to the physical safety of the intimate partner, protected person, or child OR by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner, protected person, or child that would reasonably be expected to cause bodily injury. [RCW 9.41.800\(2\)](#).

Federal law that prohibits domestic abusers restrained by protection orders from possession firearms or other dangerous weapons where the court finds that the individual poses a credible threat to the physical safety of the intimate partner, protected person, or child, are similar, though not identical to Washington’s law. See Subsection C, *below*.

PRACTICE NOTE: Law enforcement assesses protection orders to determine if they meet the state level firearm prohibitions or the federal Brady Handgun Violence Prevent Act⁷ requirements upon entering the order into the computer-based criminal intelligence system. This means that even if an order to surrender weapons is not granted, a respondent may still be prohibited from possessing firearms under federal law due to the underlying order, restraint provisions, and relationship to the petitioner.

Furthermore, the court has the authority to order *temporary* prohibition and surrender of a firearm without notice to the other party if it finds that irreparable injury could result if an order is not issued until the time for response has elapsed. [RCW 9.41.800\(3\)](#).

In addition, if the court finds that the possession of a firearm or other dangerous weapon presents a serious and imminent threat to public health or safety, or the health or safety of individual, the court may also order a party to comply with RCW 9.41.800(1)(a) – (e). [RCW 9.41.800\(4\)](#).

The court must require the party to surrender all firearms and other dangerous weapons in his or her immediate possession or control or subject to his or her immediate possession or control, and any concealed pistol license issued under RCW 9.41.070, to the local law enforcement agency. [RCW 9.41.800\(6\)](#). (Older provisions in this section that permitted a court in its discretion to permit surrender of firearms to a lawyer, family member or other approved person have been repealed.)

Violation of [RCW 9.41.800](#) is generally a misdemeanor. [RCW 9.41.810](#). Provisions for ensuring compliance with the surrender of weapons or licenses are in [RCW 9.41.801](#).

PRACTICE NOTE: Refer to [RCW 10.99.030](#) for law enforcement duties regarding documenting information about firearms and concealed pistol licenses that might assist the court or litigants in assessing firearms access.

B. Disqualification of Right to Possess a Firearm by Certain Domestic Violence Offenders

Unlawful Possession of a Firearm in the First Degree, a class B felony, is defined by [RCW 9.41.040\(1\)](#):

A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm after having previously been

⁷ Pub.L. 103-159, 107 Stat. 1536, enacted November 30, 1993.
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convicted or found not guilty by reason of insanity in this state or elsewhere of any serious offense as defined in this chapter.

If the situation does not arise to Unlawful Possession of a Firearm in the First Degree, [RCW 9.41.040\(2\)\(a\)\(i\) and \(ii\)](#) defines the crime of Unlawful Possession of a Firearm in the Second Degree and specifies included domestic violence offenses. It provides that it shall be unlawful to possess a firearm:

After having previously been convicted in this state or elsewhere of . . . the following crimes when committed by one family or household member against another, committed after July 1, 1993: Assault in the fourth degree, coercion, stalking, reckless endangerment, criminal trespass in the first degree, or violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence ([10.99.040](#) or any of the former RCW 26.50.060, 26.50.070, and 26.50.130); [or]

During any period of time that the person is subject to a court order issued under chapter [7.105](#), [9A.46](#), [10.99](#), [26.09](#), [26.26A](#), or [26.26B](#) RCW or any of the former chapters 7.90, 7.92, 10.14, and 26.50 RCW that:

- (a) Was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate;
- (b) Restrains the person from harassing, stalking, or threatening the person protected under the order or child of the person or protected person, or engaging in other conduct that would place the protected person in reasonable fear of bodily injury to the protected person or child; and
- (c) (i) Includes a finding that the person represents a credible threat to the physical safety of the protected person or child or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the protected person or child that would reasonably be expected to cause bodily injury; or
(ii) Includes an order under [RCW 9.41.800](#) requiring the person to surrender all firearms and prohibiting the person from accessing, having in his or her custody or control, possessing, purchasing, receiving, or attempting to purchase or receive, firearms.

Possession of a firearm in the second degree is a class C felony. [RCW 9.41.040\(2\)\(b\)](#). Possession of a firearm by a defendant who has been previously convicted of a “serious

offense” is a class B felony of unlawful possession of a firearm in the first degree. No proof of a domestic relationship is required for possession of a firearm in the first degree. A serious offense includes, among others, any crime of violence, reckless endangerment in the first degree, child molestation in the second degree, and any crime in which a deadly weapon verdict was returned. [RCW 9.41.010\(18\)\(a\)-\(o\)](#).

The court has no discretion to waive or limit the firearm restriction imposed under [RCW 9.41.040](#) for an adult felony offender. *State v. Damiani*, 162 Wn. App 1, 251 P. 3d 927 (2011) (comparing lack of discretion in the restoration context with the lack of discretion in the removal context).

1. Court duty to inform defendant of loss of right to possess a firearm

Both [CrR 4.2](#) and [CrRLJ 4.2](#) require that a defendant be advised, in writing, of the effect of a guilty plea on the right to possess a firearm. In addition, at the time of conviction for an offense which makes a defendant ineligible to possess a firearm, the court must inform the person both in writing and orally of the loss of right to possess a firearm and the need to surrender any concealed pistol license. [RCW 9.41.047\(1\)](#). A conviction includes a guilty finding, whether by plea or trial, even if sentence is pending. [RCW 9.41.040\(3\)](#). Use of authorized state court forms as developed by the Administrative Office of the Courts is encouraged for plea and sentence. See www.courts.wa.gov/forms/

The court is required to provide identification and conviction information to the Department of Licensing to effectuate the provisions of [RCW 9.41.047\(b\)](#). [RCW 9.41.047\(1\)](#).

2. Restoration of the right to possess a firearm

A defendant may petition a court of record for restoration of the right to possess a firearm five years after conviction of a felony if certain prerequisites have been met. Among these prerequisites are that the defendant has had no subsequent convictions of any kind and so long as possession of a firearm is not barred by other statute (RCW [9.41.040\(4\)\(a\)](#) prohibits restoration for murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances under RCW [69.50.401](#) and [69.50.410](#))) Restoration is also possible three years after conviction of a non-felony offense (prerequisites include that the defendant has had no subsequent convictions of any kind, is not barred from possession a firearm by [RCW 9.41.040\(4\)](#) and the individual has completed all the terms of his or her sentence). [RCW 9.41.040\(4\)\(a\)\(ii\)\(A\)-\(B\)](#).

The Court of Appeals held that the trial court’s power to restore the right to possess firearms is ministerial, rather than discretionary. *State v.*

Swanson, 116 Wn. App. 67, 78; 65 P.3d 343, 349 (2003) (The trial court’s function is ministerial; thus, the court did not have discretion to deny restoration to convict who met all statutory requirements for restoration).

C. Federal Legislation

Although a detailed discussion of federal legislation is beyond the scope of this manual, two significant enactments merit discussion. Under [18 U.S.C. 922\(g\)\(8\)](#), a person who is subject to a court order issued for the protection of an intimate partner cannot possess a firearm or ammunition if the order:

- (a) Was issued after a hearing at which the respondent had actual notice and an opportunity to participate;
- (b) Restrains the person from harassing, stalking, or threatening an intimate partner or otherwise placing the intimate partner in reasonable fear of bodily injury or bodily injury to a child; and
- (c) (i) Includes a finding that the person restrained represents a credible threat to an intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child. . .

In addition, pursuant to [18 U.S.C. 922\(g\)\(9\)](#), a person who has been convicted of a misdemeanor crime of domestic violence in any state court is prohibited from possessing a firearm.

Possession of a firearm by someone previously convicted of an offense with a penalty of greater than one year is barred by [18 U.S.C. 922 \(g\)\(1\)](#). Subsection (g)(1) does not require proof that the prior conviction involved an intimate partner. Subsection (g)(1) is a long-standing statute and is not part of the recent changes to [18 U.S.C. 922](#).

Violation of any of the provisions of subsection (g) of [18 U.S.C. 922](#) is punishable by up to ten years in prison. [18 U.S.C. 924 \(a\)\(2\)](#).

PRACTICE NOTE: A violation of [18 U.S.C. 922\(g\)](#) requires proof of one of several jurisdictional requirements. However, since federal jurisdiction is established by proof that the “firearm or ammunition . . . ha[d] been shipped or transported in interstate or foreign commerce,” in many situations, federal prosecution is possible.

Appendix C contains further discussion of the federal provisions.

IV. Orders for the Protection of the Victim

The legislature has also provided for the imposition of several types of orders for the protection

of victims of domestic violence, as well as victims of other violent or harassing behavior. These include:

- No-Contact Orders ([RCW 10.99.040](#), [10.99.050](#), [RCW 9A.46.050](#), [RCW 9A.46.055](#));
- Civil Protection Orders ([RCW 7.105.100](#)) which include Domestic Violence Protection Orders, Sexual Assault Protection Orders, Stalking Protection Orders, Vulnerable Adult Protection Orders, Extreme Risk Protection Orders, and Antiharassment Protection Orders; and
- Restraining Orders ([RCW 26.09.060](#), [26.09.300](#)).

Requests for protection from another party may also arise in proceedings under [RCW 26.26A.470](#) (Uniform Parentage Act); [RCW 26.26B.050](#) (restraining order-parentage proceeding); [RCW 26.44.063](#) and [RCW 26.44.150](#) (temporary restraining order or preliminary injunction; child abuse and adult dependent abuse proceedings, and penalties for violation).

The legislature has also enacted specific provisions ensuring that foreign protection orders are enforceable in Washington under [Chapter 26.52 RCW](#) as well as Canadian Protection Orders under [Chapter 26.55 RCW](#).

The following section briefly describes the various types of orders that may confront a court in a domestic violence case. No-contact orders as part of criminal proceedings are discussed in greater detail in Chapter 4 and Chapter 5. Chapter 8 contains a detailed discussion of the procedure to be followed in issuing civil protection orders, including domestic violence, sexual assault, stalking, and antiharassment protection orders.

Violation of many of these orders is a separate offense. This is discussed where appropriate below. The Washington Legislature has generally tried to make uniform the penalties for violations of the various types of orders entered for the protection of domestic violence victims. [RCW 7.105.450](#), [7.105.455](#), [7.105.460](#), and [7.105.465](#) establishes penalties for violating civil protection orders. Violation of a temporary restraining order issued pursuant to [RCW 26.44.063](#) and [26.44.150](#) are misdemeanors.

A victim's consent to the violation of a protection or no-contact order is not a defense to a criminal prosecution for violating the court order. *State v. Dejarlais*, 136 Wn.2d 939, 969 P.2d 90, 92(1998) (violation of a 26.50 protection order); *State v. Jacobs*, 101 Wn. App. 80, 2 P.3d 974, 979 (2000) (violation of a 10.99 no-contact order). In fact, [RCW 10.99.040\(4\)\(b\)](#) and [RCW 7.105.115\(1\)\(a\)\(i\)](#) require that the order prohibiting contact indicate on its face that the person restrained is subject to arrest even if the victim consents to the contact.

PRACTICE NOTE: An order that does not include this language cannot serve as the basis for a criminal charge. *State v. Marking*, 100 Wn. App. 506, 512, 997 P.2d 461, 464, *review denied*, 141 Wn.2d 1026 (2000) (conviction based on order without mandatory language reversed for insufficiency of evidence).

In addition, violation of any of these orders is punishable as contempt. For a brief discussion of whether the double jeopardy clause bars both criminal prosecution and entry of a contempt finding, see Chapter 4, Section III, G, 5.

Attachment 3 to Chapter 8 of this guide summarizes the important attributes of the various available orders.

A. No-Contact Orders Under [RCW 10.99.040](#) and [10.99.050](#)

No-contact orders, including jury instructional issues, are discussed in greater detail in Chapter 4, Section III and Chapter 5, Section X.

1. *A domestic violence no-contact order may be imposed whenever a criminal domestic violence prosecution is pending.*

A criminal no-contact order may be imposed as a condition of release or a condition of sentence. It is entered by the court having jurisdiction over the criminal matter. The moving party is generally the prosecuting attorney. A court may issue a criminal no-contact order at arraignment in cases where the defendant does not appear, where that court has found probable cause. [RCW 10.99.040\(3\)](#)

2. *The scope of a no-contact order is limited.*

A no-contact order bars the defendant from having contact with the victim. It may include a provision prohibiting the defendant from knowingly coming within or remaining at a specified distance of a location.

This type of order properly does not make provisions for the custody of children or for division of property, but may be issued to protect individuals who are not direct victims of the crime, if the relevant restraints are “directly related to the circumstances of the crime.” [RCW 9.94A.505\(8\)](#); *In re Pers. Restraint of Rainey*, 168 Wn.2d 367, 374, 229 P.3d 686 (2010). In *State v. Warren*, 165 Wn. 2d 17, 195 P.3d 940 (2008), the court held that protecting the victim’s mother was directly related to the crimes in the case, where the defendant attempted to induce her not to cooperate in the prosecution of the crime, and she had testified against the defendant, resulting in his conviction of the crime. *See also, State v. Berg*, 147 Wn. App. 923, 198 P.3d 529 (2008) (An order restricting contact for other children in the home was found to be sufficiently tailored to the crime as it addressed the potential for the same kind of abuse).

Restrictions on the defendant’s right to parent can only be imposed with a finding by the trial court that the restriction is “reasonably necessary to prevent harm to the children.” *State v. Ancira*, 107 Wn. App. 650, 653, 27 P.3d 1246, 1249 (2001). In *Ancira*, the court concluded that, under the facts presented, a provision in a criminal no-contact order that barred the defendant from having any contact with his non-victim children violated his fundamental right to parent. 107 Wn. App at

656-7. Accord *State v. Stanford*, 128 Wn. App. 280, 115 P.3d 368 (2005) (Provision of criminal sentence restricting defendant to only supervised contact with non-victim children not warranted). But see, *State v. DeLeon*, 11 Wn. App.2d 837, 456 P.3d 405 (2020) (analysis needed as to whether no contact condition prohibiting all contact with the defendant’s biological children was reasonably necessary to achieve reasonable state interest in protecting them from harm where the defendant was convicted of abusing non-biological children).

3. *Violation of a no-contact order is a crime.*

Any violation of a domestic violence no-contact order is a separate crime. It is punished pursuant to the provisions of [RCW 7.105.450](#). Generally, violation is a gross misdemeanor. However, under the following circumstances, violation is a class C felony:⁸

- (a) The act that violates a domestic violence protection order, a sexual assault protection order, a stalking protection order, or a vulnerable adult protection order, or an order issued under chapter [9A.40](#), [9A.44](#), [9A.46](#), [9A.88](#), [9.94A](#), [10.99](#), [26.09](#), [26.26A](#), or [26.26B](#) RCW, or a valid foreign protection order as defined in [RCW 26.52.020](#), or a Canadian domestic violence protection order as defined in [RCW 26.55.010](#) that is an assault (not amounting to an assault in the first or second degree) or is an act “that is reckless and creates a substantial risk of death or serious physical injury to another person.” [RCW 7.105.450\(4\)](#).

In some counties, these incidents are referred to as assaults in violation of a protection/no-contact order and not as felony violations of a no-contact order. See *State v. Sanchez*, 122 Wn. App. 579, 94 P.3d 384 (2004).

- (b) The defendant has had two previous convictions for violating a domestic violence protection order, a sexual assault protection order, a stalking protection order, or a vulnerable adult protection order, or a court order issued under chapter [9A.40](#), [9A.44](#), [9A.46](#), [9A.88](#), [9.94A](#), [10.99](#), [26.09](#), [26.26A](#), or [26.26B](#) RCW, or a valid foreign protection order as defined in [RCW 26.52.020](#), or a Canadian domestic violence protection order as defined in [RCW 26.55.010](#). The previous conviction need not involve the same person as the victim in the current offense. [RCW 7.105.450\(5\)](#).

⁸ Somewhat confusingly, both [RCW 10.99.040](#) and [10.99.050](#) require that the face of the order indicate that any violation of the order which is an assault, an act of reckless endangerment, or a *drive-by shooting* is a felony and then refer to [RCW 26.50.110](#) for the penalty provisions. [RCW 26.50.110](#) does not include the drive-by shooting provision, presumably since any drive-by shooting is, by itself, a felony. [RCW 9A.36.045](#).

NOTE: Felony violations of a no-contact order have been classified as seriousness level five offenses.⁹ [RCW 9.94A.515](#). A felony violation of a no-contact order is included within the definition of “crime against person” and subject to the filing standards of [RCW 9.94A.411](#). In addition, when sentencing an offender for a “crime against person,” the court is required to impose a community custody range. [RCW 9.94A.505\(2\)\(ii\)](#). These penalties apply to offenses which occur on or after July 1, 2000.

- (c) The defendant has violated the order by possessing a firearm or concealed pistol license. [RCW 9.41.800\(3\)](#).

B. Domestic Violence Protection Orders Under Chapter [7.105 RCW](#)

Chapter 8 contains a detailed discussion of civil protection orders and contains specific information concerning the procedure for issuing and serving such orders. Jury instructional issues are discussed in Chapter 5, IX.

1. *Protection orders may be obtained by a victim even if criminal charges are not pending.*

A court may issue a protection order when there are specific allegations of domestic violence regardless of “whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.” [RCW 7.105.105\(5\)](#).

Pursuant to [RCW 7.105.110\(1\)](#), the Department of Social and Health Services (DSHS) may seek a domestic violence protection order on behalf of and with the consent of a vulnerable adult. When DSHS has reason to believe a vulnerable adult lacks the ability or capacity to consent, DSHS, in its discretion, may seek relief on behalf of the vulnerable adult.

2. *Scope of a protection order.*

Unlike a criminal no-contact order, the scope of a protection order can be quite broad. The types of relief available are outlined in [RCW 7.105.310\(1\)\(a\) – \(v\)](#).

3. *Penalty for violation of protection orders.*

Violation of a protection order, when the restrained person knows of the order and violates a provision prohibiting acts or threats of violence against, or stalking of, a protected party, or a restraint provision prohibiting contact with a protected party,

⁹ Before this date, these offenses were “unranked” and thus subject to a 0 to 365-day penalty, regardless of the defendant’s prior record.

is a crime. [RCW 7.105.450](#); *State v. Wofford*, 148 Wn. App 870, 201 P.3d 389 (2009). *See also, Jacques v. Sharp*, 83 Wn. App. 532, 542-3 922 P.2d. 145, 150 (1996) (interpreting “restraint provision” in prior version of the statute)

However, a violation of any provision of a domestic violence protection order that follows two prior convictions for violating a no-contact or domestic violence protection order subjects a defendant to felony criminal prosecution even if the violation, itself, could not have been prosecuted. *State v. Chapman*, 140 Wn.2d 436, 998 P.2d 282 (2000).

A criminal violation of a domestic violence, sexual assault, stalking, or vulnerable adult protection order is generally a gross misdemeanor. [RCW 7.105.450\(1\)](#). The violation is a class C felony, however, if:

4. The act that violates a domestic violence protection order, a sexual assault protection order, a stalking protection order, or a vulnerable adult protection order, or an order issued under chapter [9A.40](#), [9A.44](#), [9A.46](#), [9A.88](#), [9.94A](#), [10.99](#), [26.09](#), [26.26A](#), or [26.26B](#) RCW, or a valid foreign protection order as defined in [RCW 26.52.020](#), or a Canadian domestic violence protection order as defined in [RCW 26.55.010](#) that is an assault (not amounting to an assault in the first or second degree) or is an act “that is reckless and creates a substantial risk of death or serious physical injury to another person.” [RCW 7.105.450\(4\)](#).

PRACTICE NOTE: In some counties, these incidents are referred to as assaults in violation of a protection/no-contact order and not as felony violations of a no contact order. *See State v. Sanchez*, 122 Wn. App. 579, 94 P.3d 384 (2004).

- (b) The defendant has had two previous convictions for violating a domestic violence protection order, a sexual assault protection order, a stalking protection order, or a vulnerable adult protection order, or a court order issued under chapter [9A.40](#), [9A.44](#), [9A.46](#), [9A.88](#), [9.94A](#), [10.99](#), [26.09](#), [26.26A](#), or [26.26B](#) RCW, or a valid foreign protection order as defined in [RCW 26.52.020](#), or a Canadian domestic violence protection order as defined in [RCW 26.55.010](#). The previous conviction need not involve the same person as the victim in the current offense. [RCW 7.105.450\(5\)](#).

PRACTICE NOTE: Felony violations of a protection order have been classified as seriousness level five offenses. [RCW 9.94A.515](#). A felony violation of a protection order is included within the definition of “crime against person” and subject to the filing standards of [RCW 9.94A.411](#). In addition, when sentencing an offender for a “crime against person,” the court is required to

impose a community custody range. [RCW 9.94A.505\(2\)\(11\)](#).

Upon conviction, the court, in addition to any other penalties provided by law, may order the defendant to submit to electronic home detention. For further discussion see, Chapter 4, III, G, 6.

Violation of any provision of a domestic violence, sexual assault, stalking, or vulnerable adult protection order constitutes contempt of court, which provides an additional remedy for victims to enforce such an order. [RCW 7.105.450](#). *State v. Wofford*, 148 Wn.App. 870, 201 P.3d 389 (2009). The existence of two different remedies in punishing a defendant who violates the restraint provisions of a protection order does not violate an accused's right to equal protection. *State v. Horton*, 54 Wn. App. 837, 840-1 776 P.2d 703, 704-5, (1989).

C. Protection and Restraining Orders in Other Domestic or Civil Proceedings

1. Domestic violence protection orders may be entered in a dissolution or parentage action.

Where a separate protection order has been issued, the court may consolidate the domestic violence protection order cause numbers within the dissolution or parentage case. [RCW 7.105.550](#).

2. Restraining orders may be entered in a dissolution or parentage action.

The statutes governing marriage dissolutions and parentage actions authorize the court to enter restraining orders, temporary or otherwise, in the context of those proceedings. Chapters [26.09](#), [26.26A](#), [26.26B](#) RCW.

The weapons surrender provisions of [RCW 9.41.800](#) apply to restraining orders issued under [RCW 26.09.050](#), [26.09.060](#), [26.26B.020](#), or [26.26A.470](#).

The relief available with a restraining order is broad, and the order may be tailored to the facts and circumstances of each individual case. Provision can be made for child support, maintenance, and attorney fees. A restraining order can last longer than one year.

Obtaining a restraining order can be complex and expensive. The victim may be unable to obtain a restraining order without retaining counsel. Also, a restraining order is not available in the context of another proceeding if the parties are neither married nor have a child in common. In such cases, the victim's remedy is normally limited to a protection order.

3. Penalty for violation

Violation of domestic violence protection orders within dissolution or parentage

cases are fully enforceable under [RCW 7.105](#).

Knowing violation of a provision in a restraining order “restricting the person from acts or threats of violence, or of a provision restraining the person from going onto the grounds of or entering the residence, workplace, school, or day care of another, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location” is a crime. [RCW 26.09.300\(1\)](#). Penalties (including felony penalties under some circumstances) are governed by [RCW 7.105.450](#).

D. Foreign Protection Orders

In recognition of what the Washington State Legislature termed an “epidemic” of women fleeing abusers by crossing state lines and in fulfillment of the policies of the Violence Against Women Act (VAWA) as Title IV of the violent crime control and law enforcement act (P.L. 103-322), the legislature adopted the Foreign Protection Order Full Faith and Credit Act in 1999. This act has been codified in [Chapter 26.52 RCW](#).

The legislature, in adopting this act, intended “that the barriers faced by persons entitled to protection under a foreign protection order will be removed and that violations of foreign protection orders be criminally prosecuted in this state.” [RCW 26.52.005](#).

In 2019 the legislature extended the recognition of the foreign protection orders to civil protection orders issued in Canada. [Chapter 26.55 RCW](#).

For more information about foreign protection orders, see Chapter 8, Section XXV.

E. Antiharassment Protection Orders

1. Civil antiharassment protection orders: [RCW 7.105.100\(f\)](#)

- (a) Antiharassment orders in the context of domestic violence cases may be sought by other family members of the victims of domestic violence who themselves fear violence or harassment from the perpetrator, and generally, not by the victims themselves. For example, antiharassment orders may come into play in domestic violence cases when an ex-partner is harassing a current partner, the parents, or children of a former family or household member.
- (b) The superior and district courts have jurisdiction over any antiharassment protection order proceedings, except that such proceedings must be transferred from district court to superior court when: a superior court has exercised/is exercising jurisdiction over a proceeding involving the parties; the action would have the effect of interfering with a respondent’s care, control, or custody of the respondent’s minor child; the action would affect the use or

enjoyment of real property for which the respondent has a cognizable claim or would exclude a party from a shared dwelling; the petitioner, victim, or respondent to the petition is under 18 years of age; or the district court is unable to verify whether there are potentially conflicting or related orders involving the parties as required by [RCW 7.105.105](#) or [RCW 7.105.555](#). [RCW 7.105.050\(1\)\(a\) – \(e\)](#).

- (c) The municipal and district courts shall have jurisdiction and cognizance of any criminal actions brought under RCW [10.14.120](#) and [10.14.170](#). *Id.*

PRACTICE NOTE: In 1993, Const. art. 4, § 6 (amend. 65) was amended to grant district and superior courts concurrent jurisdiction over cases in equity. Thus, case law in which it was held that an anti-harassment order issued by a district court was void as being in excess of the court’s jurisdiction is no longer controlling. See *State v. Brennan*, 884 P.2d 1343, 1340 n.8, 76 Wash. App. 347, 356 n.8 (1994).

- (d) “Unlawful harassment” is defined as a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, harasses, or is detrimental to such person, and that 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 petitioner; or a single act of violence or threat of violence directed at a specific person that seriously alarms, annoys, harasses, or is detrimental to such person, and that serves no legitimate or lawful purpose, which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner. A single threat of violence must include a malicious and intentional threat as described in [RCW 9A.36.080\(1\)\(c\)](#) or the presence of a firearm or other weapon.
- (e) Violation of an anti-harassment order by a respondent 18 years or over is a gross misdemeanor. [RCW 7.105.455\(2\)](#).

2. *Criminal anti-harassment orders under [RCW 9A.46.040](#)*

- (a) A defendant who is charged with a crime of harassment under [RCW 9A.46.020](#) may be ordered, as a condition of release, to:

Stay away from the home, school, business, or place of employment of the victim;

Refrain from “contacting, intimidating or threatening, or otherwise interfering” with the victim or others, including but not limited to members of the victim’s family or household. [RCW 9A.46.040\(1\)\(a\)\(b\)](#).

- (b) Similarly, [RCW 9A.46.080](#) permits imposition of a criminal anti-harassment order following conviction. Violation of such an order is a gross misdemeanor.

3. Stalking Protection Orders: [RCW 7.105.100\(c\)](#)

- (a) In 2013, in response to the murder of a stalking victim, the legislature enacted the Jennifer Paulson Stalking Protection Order Act. [RCW 7.92](#). (ESSB 1383, Laws of 2013, ch. 84, Sec. 10.) That statute was subsequently repealed and replaced by Chapter 7.105 RCW.
- (b) A stalking protection order petition may be filed by someone on behalf of himself for herself; a minor child, where the petitioner is the parent, legal guardian, or custodian; a vulnerable adult, where the petitioner is an interested person; or any other adult for whom the petitioner demonstrates to the court’s satisfaction that the petitioner is interested in the adult’s well-being, the court’s intervention is necessary, and the adult cannot file the petition because of age, disability, health, or inaccessibility. A person who has been stalked by an intimate partner or family or household member *should, but is not required to*, seek a domestic violence protection order. [RCW 7.105.100\(c\)](#).
- (c) “Stalking” is defined as:
 - (I) Any act of stalking as defined under [RCW 9A.46.110](#);
 - (II) Any act of cyber harassment as defined under [RCW 9A.90.120](#);
 - (III) Any course of conduct involving repeated or continuing contacts, attempts to contact, monitoring, tracking, surveillance, keeping under observation, disrupting activities in a harassing manner, or following of another person that:
 - (i) Would cause a reasonable person to feel intimidated, frightened, or threatened and that actually causes such a feeling;
 - (ii) Serves no lawful purpose; and
 - (iii) The respondent knows, or reasonably should know, threatens, frightens, or intimidates the person, even if the stalker did not intend to intimidate, frighten, or threaten the

person. [RCW 7.105.010\(34\)](#).

- (d) Violation of stalking protection orders triggers enhanced criminal penalties as compared with anti-harassment orders. Unlike in cases involving violations of anti-harassment orders, law enforcement must arrest a respondent when there is probable cause to believe that a stalking protection order has been violated. [RCW 10.31.100\(2\)](#).
- (e) The superior and district courts have jurisdiction over any stalking protection order proceedings, except that such proceedings must be transferred from district court to superior court when: a superior court has exercised/is exercising jurisdiction over a proceeding involving the parties; the action would have the effect of interfering with a respondent's care, control, or custody of the respondent's minor child; the action would affect the use or enjoyment of real property for which the respondent has a cognizable claim or would exclude a party from a shared dwelling; the petitioner, victim, or respondent to the petition is under 18 years of age; or the district court is unable to verify whether there are potentially conflicting or related orders involving the parties as required by [RCW 7.105.105](#) or [RCW 7.105.555](#). [RCW 7.105.050\(1\)\(a\) – \(e\)](#).

4. Criminal Stalking No-Contact Orders

A defendant who is charged with a crime of stalking under [RCW 9A.46.110](#) or [RCW 9A.46.060](#) may be prohibited, as a condition of release, from having any contact with the victim or be required to stay a specified distance away from a location. [RCW 9A.46.040\(3\)](#).

[RCW 9A.46.055](#)) also permits imposition of a criminal anti-stalking order following conviction. Violation of such an order is a gross misdemeanor.

5. Sexual Assault Protection Orders: [RCW 7.105.100\(b\)](#)

In 2006, the Washington State Legislature passed [Chapter 7.90, RCW](#), the Sexual Assault Protection Order Act. This law filled a gap that had existed for many sexual assault victims by providing them with an avenue to obtain “stay away” protection from the offender. That statute was subsequently repealed and replaced by Chapter 7.105 RCW. Civil protection orders related to sexual assault are also discussed in greater detail in Chapter 9 of Washington's *Sexual Violence Bench Guide*.¹⁰

- (a) In criminal cases, [RCW 9A.44.210](#) allows a court to prohibit contact between the accused and alleged victims when the accused has been

¹⁰ Available at:

<https://www.courts.wa.gov/index.cfm?fa=home.contentDisplay&location=manuals/SexualOffense/index>

charged with or arrested for a sex offense defined in [RCW 9.94A.030](#).

When a person has been convicted of a sex offense as defined in [RCW 9.94A.030](#), any violation of [RCW 9A.44.096](#) or [RCW 9.68A.090](#), or any gross misdemeanor that is, under [RCW 9A.28](#), a criminal attempt, solicitation, or conspiracy to commit a sex offense, a no-contact order issued at sentencing is recorded as a sexual assault protection order. [RCW 9A.44.210\(6\)](#).

- (b) A petitioner who has been sexually assaulted by an intimate partner or a family or household member *should, but is not required to*, seek a domestic violence protection order.
- (c) Any person may seek relief by filing a petition that alleges nonconsensual sexual conduct or nonconsensual sexual penetration committed against the petitioner by the respondent. [RCW 7.105.100\(1\)\(b\)](#).
- (d) A victim of nonconsensual sexual conduct or nonconsensual sexual penetration, as defined in [RCW 7.105.010\(26\), \(32\), \(33\)](#), including a single incident, and who is at least fifteen years of age, may petition the court for a sexual assault protection order on their own behalf, or on behalf of a family or household member who is a minor if chosen by the minor and capable of pursuing the minor's stated interest in the action. [RCW 7.105.100\(2\)](#).
- (e) A person under 15 years of age who is seeking relief under this chapter is required to seek relief by a person authorized as petitioner under [RCW 7.105.100](#).
- (f) The court may appoint a guardian ad litem for a petitioner or respondent under 18 years of age as it deems necessary. The appointment of a guardian ad litem shall be at no cost to either party. [RCW 7.105.105\(11\)](#).

V. DOMESTIC VIOLENCE DATABASE AND COMPUTER-BASED INTELLIGENCE INFORMATION SYSTEM

A. Domestic Violence Database

All no-contact, protection, and similar orders must be entered into the judicial information system or alternative database. [RCW 7.105.555](#).

PRACTICE NOTE: Full identifiers for respondents (first name, middle initial, last name, and date of birth) or at a minimum, their age range, are important to include for law enforcement to confirm identity for service or enforcement, and

for courts to understand prior history.

B. Judicial Information System

To prevent the issuance of competing protection orders in different courts and to give courts necessary information, the judicial information system or alternative databases must be available to all judges with the names of the parties and cause numbers for civil protection orders issued under Chapter 7.105 RCW, protection orders provided by military and tribal courts, no-contact orders issued under 9A.46 and 10.99 RCW, dissolution under chapter 26.09 RCW, parentage actions under chapters 26.26A or 26.26B RCW, every restraining order under chapter 26.44 RCW, every foreign protection order filed under chapter 26.52 RCW, and Candian domestic violence protection orders filed under chapter 26.55 RCW. [RCW 7.105.555](#).

PRACTICE NOTE: Unless tribal or military orders are also filed in state court, those orders are not currently be found in JIS.

The clerk of the court is to forward a copy of the order on or before the next judicial day to the law enforcement agency specified in the order. That agency is to enter the order into a computer-based criminal intelligence system. If the order is modified or terminated, the clerk is to forward a copy of the superseding document to the appropriate law enforcement agency. The system currently in use is the Washington Crime Information Center (WACIC), managed by the Washington State Patrol.

Each court should utilize the state court forms for protection orders to be certain that the orders contain the necessary findings, dates and data. See www.courts.wa.gov/forms/

If the order specifies no particular date, it is unclear how long the order will remain in law enforcement's computer-based criminal intelligence information system. Some law enforcement agencies will set an expiration for one year, while others will set an expiration for decades away.

PRACTICE NOTE: Because of data system requirements, some law enforcement agencies will not enter an order into the system without an expiration date unless it contains the clause that says “expires on ____ or one year from today's date.” Therefore, failing to include an expiration date in the absence of that clause is strongly discouraged.

If the order specifies a particular date, the order remains in the law enforcement computer-based criminal intelligence information system until the expiration date specified on the order. [RCW 10.99.040\(5\)–\(6\)](#), [RCW 10.99.050\(3\)](#).

Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement of the existence of the order.

PRACTICE NOTE: The court should be aware that not every protection order

may actually be entered into the law enforcement database. Washington State agencies began entering protection orders into the National Crime Information Center (NCIC) using the NCIC protection order format in September 1999. When there are gaps in the mandatory information fields required for entry into NCIC, the order may not be recorded. Neither the courts nor the victim may be aware that the order was not entered. Also note, foreign protection orders are not entered unless they have been filed with a state court. The court should make every effort to ensure the required information is included on every order, including providing a clear expiration date for the order. Use of the pattern forms is strongly encouraged. See www.courts.wa.gov/forms/

VI. Confidential Name Changes and Confidential Addresses

A. Name Changes for Domestic Violence Victims

[RCW 4.24.130\(5\)](#) provides:

Name change petitions may be filed and shall be heard in superior court when the person desiring a change of his or her name or that of his or her child or ward is a victim of domestic violence as defined in [7.105.010](#) and the person seeks to have the name change file sealed due to reasonable fear for his or her safety or that of his or her child or ward. Upon granting the name change, the superior court shall seal the file if the court finds that the safety of the person seeking the name change or his or her child or ward warrants sealing the file. In all cases filed under this subsection, whether or not the name change petition is granted, there shall be no public access to any court record of the name change filing, proceeding, or order, unless the name change is granted but the file is not sealed.

Name changes are authorized by the District Courts in Washington, but no statutory provision for sealing by the District Court is set forth in [RCW 4.24.130](#).

B. Confidential Addresses

A victim of domestic violence may request that the secretary of state designate an address for receipt of mail and service of process.¹¹ The address designated by the secretary can be used by the victim for virtually all legitimate purposes. The secretary will forward all first-class mail to the actual address of the victim. [RCW 40.24.010](#) et seq. The victim's actual address may be disclosed only to a law enforcement agency or pursuant to court order. [RCW 40.24.070](#).

The secretary of state has adopted administrative regulations to carry out the dictates of [RCW 40.24](#). These are found at [WAC 434-840](#).

¹¹ Please refer to Appendix L for an Address Confidentiality Program Bench Card, or see <http://www.secstate.wa.gov/acp/>.

A parent or guardian may make a request for a confidential address on behalf of a child. [RCW 40.24.030\(1\)](#). A person intending to relocate a child who is a participant in the confidential address program of [RCW 40.24](#) may have confidential information notice requirements delayed or waived. [RCW 26.09.460](#).

VII. Domestic Violence Shelters and Advocacy Programs

A. Background

In 1979 the Washington Legislature passed a law providing for funding and standards for domestic violence shelters and services. [RCW 70.123](#). In 2015, the legislature updated the statute and declared, in part:

“The legislature finds that there are a wide range of consequences to domestic violence, including deaths, injuries, hospitalizations, homelessness, employment problems, property damage, and lifelong physical and psychological impacts on victims and their children. These impacts also affect victims' friends and families, neighbors, employers, landlords, law enforcement, the courts, the health care system, and Washington state and society as a whole. Advocacy and shelters for victims of domestic violence are essential to provide support to victims in preventing further abuse and to help victims assess and plan for their immediate and longer term safety, including finding long-range alternative living situations, if requested.” SSB 5631, [Laws of 2015, Chapter 275](#); [RCW 70.123.010](#).

Washington State-funded domestic violence shelter and service standards are found at [WAC 388-61A](#), which covers facility standards, as well as standards relating to administrative and supportive service delivery standards.

B. Confidentiality of Victim Information

Domestic violence program staff and volunteers are prohibited from disclosing information about a recipient of shelter, advocacy, or counseling services without the informed authorization of the recipient. [RCW 26.50.076](#). Furthermore, communications between a victim and a domestic violence advocate are privileged. [RCW 5.60.060\(8\)](#).

Discovery of domestic violence program records is governed by [RCW 70.123.075](#), requiring a written motion and supporting affidavits by the party seeking discovery, and requiring the court to conduct an in-camera review of the records. The court shall determine whether the domestic violence program's records are relevant and whether the probative value of the records is outweighed by the victim's privacy interest in the confidentiality of such records, taking into account the further trauma that may be inflicted upon the victim by the disclosure of the records. [RCW 70.123.075\(c\)](#). The court shall enter an order stating whether the records or any part of the records are discoverable and setting forth the basis for the court's findings. [RCW 70.123.075\(d\)](#).

[RCW 70.123.078](#) prohibits disclosure of the confidential addresses of domestic violence

programs in court proceedings unless the court finds, following a hearing where the domestic violence program has been notified and provided an opportunity to be heard, that such disclosure is necessary for the implementation of justice. The court's finding, by clear and convincing evidence, must consider safety and confidentiality concerns of the parties and other residents of the domestic violence program, and other alternatives to disclosure that would protect the interests of the parties in making such a finding. [RCW 70.123.078\(1\)](#).

Where a court orders that the confidential location or address be disclosed, the court shall order that further dissemination be prohibited, and that the court records relating to such information be sealed. [RCW 70.123.078\(2\)](#). Intentional and malicious disclosure of this confidential information is a gross misdemeanor. [RCW 70.123.078\(3\)](#).

VIII. Domestic Violence Fatality Review Panels

Pursuant to [RCW 43.235](#), the Department of Social and Health Services was directed to coordinate the review of domestic violence fatalities across Washington State. Review panels are to include medical personnel, forensic pathologists, prosecuting attorneys, domestic violence advocates, and other persons with appropriate expertise. Biennial statewide reports were generated through 2010, summarizing the findings of the various panels and identifying issues and performance deficits identified by the various panels. The Fatality Review Project continues to track domestic violence homicide statistics and issue findings on population-specific domestic violence homicides. The reports can be found at <https://wscadv.org/resources/washington-state-fatality-review-reports/> or by contacting the Washington State Coalition Against Domestic Violence.¹²

¹² For further information, please see <http://www.wscadv.org/>.