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**COURTS**  
ADMINISTRATIVE OFFICE OF THE COURTS

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TO: Judges, Court Commissioners, Clerks, Court Administrators, Prosecuting Attorneys, and Defense Attorneys

FROM: Merrie Gough, Senior Legal Analyst

SUBJECT: Domestic Violence No-Contact Order – Notes on local usage

The legislature directed the Administrative Office of the Courts (AOC) to develop a no-contact order for all orders issued under chapter 10.99 RCW. On behalf of AOC, the Washington Pattern Forms Committee (Committee) developed the Domestic Violence No-Contact Order required under RCW 10.99.040(2)(c). Beginning January 1, 2011, all no-contact orders issued under Chapter 10.99 RCW must substantially comply with that Domestic Violence No-Contact Order.

The Committee considered comments from the Gender and Justice Commission and the legal community when it developed the Domestic Violence No-Contact Order. The Committee prepared this memorandum which explains the rationale for some of the no-contact order provisions and discusses possible variations to conform to local practice. The Committee intends this memorandum to help the courts and attorneys to maintain a no-contact order that substantially complies with the Domestic Violence No-Contact Order developed by AOC:

A.	Caption
	<p>1. <input type="checkbox"/> <b>Replacement Order (paragraph 10)</b></p> <p>Check this box in the caption if the order replaces a prior order.</p> <p>Per Laws of 2010, ch. 274, §310, AOC and the Gender and Justice Commission (Commission) must develop guidelines by December 1, 2011, to help courts establish a process to reconcile duplicate or conflicting no-contact or protection orders. At an early meeting the Commission members agreed that amended orders create the potential for duplicate or conflicting orders. If an order amends a prior order, law enforcement, restrained persons, judges, and attorneys, and protected persons must have all the orders in front of them to figure out which are the current provisions. The Commission asked the Committee to refrain from using the term “Amended” in the new order. Therefore, the Committee adopted the term “Replacement Order.”</p> <p>When the court issues an order that replaces the prior order, check the boxes in the caption and in paragraph 10, which paragraph explains that the order replaces all prior no-contact orders protecting the same person issued under the same cause number.</p>

		<p>The term “Replacement Order” is also consistent with the <i>Washington State Administrative Office of the Courts Model Policy for Victims’ Request for Rescission or Modification of No-Contact Order developed for AOC</i> by the Commission. The model policy states “If a no-contact order is modified, a new no-contact order should be issued stating that it replaces a prior order ...” If the court grants a protected person’s motion to modify a Domestic Violence No-Contact Order, the check boxes for “Replacement Order” in the caption and in front of paragraph 10 should be checked.</p>
B.	Personal Identifiers	
	1.	<p><b>Defendant’s Identifiers</b></p> <p>The defendant’s identifiers of Date of Birth, Gender, and Race appear in a thick-bordered box in the right side of the first page. Several courts asked whether the identifiers could be placed in the caption below the Defendant’s name.</p> <p>The Committee retained the Defendant’s Identifier box. In 2005, Washington State adopted the Model First Page Template for protection orders as part of the national Extending Project Passport – a project to improve enforcement of protection orders across jurisdictions. The template places key information in the same location on the first page to help law enforcement in different jurisdictions recognize an order as a protection order that needs to be enforced. The template includes the box with the Defendant’s identifiers in the right side of the page. The civil protection orders issued under Chapter 26.50 RCW contain the template features, such as the Defendant’s identifiers box. The Committee added the Model First Page Template features to the criminal domestic violence no-contact order.</p>
	2.	<p>The personal identifiers on the no-contact order for the defendant and protected person include: name, date of birth, gender, and race.</p> <p>Those identifiers are the minimum identifiers that law enforcement needs to enter the domestic violence no-contact order into WACIC/NCIC. The Committee added the identifiers to the forms so the order would contain all the identifiers necessary for data entry.</p> <p>By local option, courts and law enforcement can still use the Law Enforcement Information Sheet, which has more detailed personal identifiers and other information that is helpful to law enforcement.</p>
	3.	<p>When the protected person is a minor: In paragraph 1, in the section on Protected Person’s Identifiers, the form states: “If a minor, use initials instead of name, and complete a Law Enforcement Information Sheet (LEIS).”</p> <p>The Committee based the language in quotation marks on RCW 7.69A.030, which, in summary, states: the name of a child victim or witness of a violent crime, sex</p>

		<p>crime or child abuse cannot be disclosed to the public unless the child or the parents give consent. Judges, prosecutors and law enforcement shall make every reasonable effort to assure the child is afforded that right. Application of the right in an individual case is subject to the judge's, prosecutor's or law enforcement officer's discretion.</p> <p>Most jurisdictions use the minor's initials and complete an LEIS to keep the minor's name confidential. The Committee recognizes that some jurisdictions may develop a local option that complies with RCW 7.69A.030.</p>
	4.	<p>Each Domestic Violence No-Contact Order should only protect one person.</p> <p>If there is a family with multiple family members in need of protection, the court should issue a separate no-contact order for each protected person. Each individual is best protected by their own order. Also, it is less complex and less likely to result in error to modify and replace, or rescind an order that only has one protected person.</p>
C.	Paragraph 2 – Protection Provisions A through D	
	1.	<p>The Committee received and considered several suggestions regarding the introductory text of paragraph 2: Defendant “do not,” “will not,” “shall not,” “must not,” and “Defendant is prohibited from:” The Committee decided to continue using “do not;” but the Committee deleted “do not” after “Defendant” and placed “do not” at the beginning of each provision.</p> <p>Additionally, the Committee received and considered several suggestions for improving the format of provision 2.A. The Committee adopted:</p> <p style="padding-left: 40px;">“do not cause, attempt, or threaten to cause bodily injury to, assault, sexually assault, harass, stalk, or keep under the surveillance the protected person.”</p>
	2.	<p>Electronic communication detail. Paragraph 2.B. prohibits contact by electronic means.</p> <p>The Committee received suggestions to provide more details regarding the type of electronic communication that is prohibited. The Committee kept “electronic means” because that terminology incorporates all types of electronic communication. However, courts may add specific forms of electronic communication, such as “text messaging” per local option.</p>
	3.	<p>Default distance. In paragraph 2.C. the form contains the default provision “(1,000 feet if no distance entered).”</p> <p>It is mandatory to include a default distance in the Domestic Violence No-Contact Order. However, courts may change the distance per local agreement.</p>

4.	<p>The Committee received a few requests to include “person” in paragraph 2.C.</p> <p>The Committee did not include “person” based upon RCW 10.99.040(2)(a) which authorizes the court to issue a no-contact order “prohibiting the person charged or arrested from having any contact with the victim or from knowingly coming within, or knowingly remaining within, a specified distance of a location.” In the Domestic Violence No-Contact Order, paragraph 2.B. relates to no contact with the victim. Paragraph 2.C. relates to locations.</p>
5.	<p>Paragraph 2.C. states defendant “do not knowingly enter, remain, or come within _____ (1,000 feet if no distance entered) of the protected person’s residence, school, workplace, other: _____.”</p> <p>There are no check boxes in front of residence, school, workplace, or other. If the court does not want to restrict the defendant from one of those locations, the court can strike out the location.</p>
6.	<p>Paragraph 2.D. Other:</p> <p>The Committee received suggestions to include provisions relating to visitation as described in the parenting plan, or email or some other communication only to discuss and accomplish visitation with the children, to work out bills or other issues or special circumstances, or include additional restraint provisions based upon RCW 26.50.110.</p> <p>The Committee included an “other” provision in which to write provisions other than the default provisions in paragraph 2.A.through 2.C.</p>
7.	<p>Home, school, or work address of the protected person.</p> <p>The Committee received a request to consider adding a line to the form with the protected person’s address, with the option to keep the address information confidential.</p> <p>The Committee did not add space for the protected person’s address based upon RCW 10.99.040(1)(c), which states:</p> <p>“(1) Because of the serious nature of domestic violence, the court in domestic violence actions:</p> <p>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.”</p>

D.	Paragraph 2 E Firearms	
	1.	<p>Firearm orders are on page 1, findings are on page 2.</p> <p>The Committee received a few requests to place the findings in paragraph 7, relating to firearms with the order provisions in paragraph 3.</p> <p>The Committee decided to keep all of the provisions that are important to the defendant on the first page. All the findings the court makes also need to be kept together. Therefore, the Committee kept the firearm orders in paragraph 3 on page 1 and kept the firearm findings in paragraph 7 on page 2.</p> <p>The language in the first two check box options in paragraph 3 is different because the provisions are based upon different statutes. The Committee added statutory citations to paragraph 3.</p> <p>Upon conviction, courts use a separate Notice of Ineligibility to possess a firearm.</p> <p>If a local court uses a separate firearm order, the court should keep the paragraph 3 heading "3. Firearms and Weapons" and replace the paragraph text with "See separate order" or something similar.</p>
E.	Expiration Date	
	1.	<p>Paragraph 4 contains a default expiration date of "[f]ive years from today if no date is entered."</p> <p>The five-year default date is based upon RCW 3.66.068, as amended by Laws of 2010, ch. 274, §405, and RCW 3.50.330, as amended by Laws of 2010, ch. 274, §406, which extended the courts of limited jurisdiction's jurisdiction over domestic violence offenses to five years.</p> <p>Courts may change the default expiration date to one year, per RCW 10.99.050(3). The order must have a date certain for an expiration date.</p>
	2.	<p>A box surrounds the expiration date near the bottom of page one.</p> <p>The box around the expiration date is a feature of the Model First Page Template. The box is a mandatory feature of the order. If your court wants to include the expiration date in the caption, keep paragraph 4 and change the text to "This order expires on the date in the caption" or something similar.</p>
F.	Warnings	
	1.	<p>The Warning on page 1 is based upon the required language in RCW 10.99.040(4)(b):</p> <p style="padding-left: 40px;">“(b) The written order releasing the person charged or arrested shall contain the court's directives and shall bear the legend: ‘Violation of this order is a</p>

		<p>criminal offense under chapter <a href="#">26.50</a> RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order.' ”</p> <p>The Committee received a few suggestions to modify the warning. The Committee kept the statutory warning. Local courts may add to the warning.</p>
<b>G. Findings of Fact – paragraph 6 findings re relationship</b>		
	1.	<p>Paragraph 6 contains the following findings:</p> <p>“The court further finds that the defendant’s relationship to a person protected by this order is an <input type="checkbox"/> Intimate partner (former/current spouse; parent of common child; or former/current cohabitants as intimate partners) or <input type="checkbox"/> Other family member as defined by Ch. 10.99 RCW:          _____”</p> <p>The Committee received several suggestions to add “dating relationship” or “parent” to the first check box option.</p> <p>The relationship findings are for federal Brady purposes. Under 18 U.S.C.A § 921(a)(32) an “intimate partners” is defined as a spouse/former spouse, parent of a common child, current/former cohabitant. The no-contact order spells out the federal intimate partner relationships for Brady purposes. All other relationships that qualify for a domestic violence no-contact order under state law are included in check box for “other family members”. The type of relationship that applies under state law can be written on the line provided.</p>
	2.	<p>The Committee received a request to include under paragraph 6, relationship findings, current/former state-registered domestic partners, under RCW 26.60.040, and any domestic partners registered under other municipal or local authority.</p> <p>The Committee did not include registered domestic partners as “former/current cohabitants as intimate partners” includes registered domestic partners.</p>
<b>H. Findings of Fact – paragraph 6 firearms</b>		
	1.	<p>By local option, a court may revise the formatting of the pretrial firearm findings as follows:</p> <p>Indent and stack the 3 pretrial firearm findings options.</p> <p><input type="checkbox"/> (Pretrial order) The court makes the...</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The defendant used...</li> <li><input type="checkbox"/> The defendant is...</li> <li><input type="checkbox"/> Possession of...</li> </ul>

I.	Civil Standby/Alternative
1.	Paragraph 8 is a civil standby order. Courts may use civil standby language adopted by local agreement.
J.	Paragraph 9, Clerk's Action
1.	<p>Paragraph 9 states:</p> <p style="padding-left: 40px;">“The clerk of the court shall forward a copy of this order on or before the next judicial day to:_____ <input type="checkbox"/> County Sheriff's Office <input type="checkbox"/> Police Department where the case is filed, which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.”</p> <p>The language is based upon statutory language. RCW 10.99.040(6). Local courts may have developed an electronic alternative that complies with the spirit of the law and may modify or delete the language in the form.</p>
K.	Check Box for Replacement Orders
1.	Paragraph 10 states: “This order replaces all prior no-contact orders protecting the same person issued under this cause number.” The box at the front of paragraph 10 should be checked when it applies and when the check box for “Replacement Order” is checked in the caption.
L.	Signature Lines
1.	<p>Defendant's signature line.</p> <p>The Committee received several suggestions to clarify that the Defendant receives a copy of the order for full faith and credit purposes and for enforcement purposes.</p> <p>In addition to the statement “in open court with the defendant present, and the defendant's signature, the Committee added above the defendant's signature line the statement “I acknowledge receipt of a copy of this order.”</p>
M.	Notification to Victim
1.	<p>The Committee received several requests to include in the no-contact order a provision for service of a copy of the order on the protected person, or a statement that the victim is entitled to a certified copy of the order. This request is based upon RCW 10.99.040 (4)(c) which states " A certified copy of the order shall be provided to the victim."</p> <p>The Committee added the following sentencing after the Defendant's signature and above the Interpreter declaration:</p> <p style="padding-left: 40px;">“The protected person shall be provided with a certified copy of this order.”</p>

N.	Additional Comment
	<p>The Committee received the following suggestion:</p> <p style="padding-left: 40px;">“It would be great if the form had a statewide phone number or website for domestic violence victims and defendants to contact for information, evals, treatment or assistance.”</p> <p>The Committee thought that was a good idea; but more appropriate for instructions prepared for defendants and victims as a local option.</p>