

**Washington State Criminal Justice Training Commission
Basic Law Enforcement Academy**



**Washington State
Domestic Violence
Student Handbook**

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Washington State Criminal Justice Training Commission
Basic Law Enforcement Academy
Domestic Violence Student Handbook

Editor's Note:

This Student Handbook was compiled and formatted from a large number of resources. Some verbiage was changed for ease of reading, stylistic continuity, and formatting considerations. Every effort was made to stay true to the meaning and context of the original source material. Material in this handbook is either used with permission or used under the Fair Use doctrine.

Throughout this handbook, we will be discussing domestic violence victims and suspects. At times, the suspect will be referred to as male, and the victim as female. This is not meant to be sexist or gender-biased. The cold reality is that the overwhelming majority of domestic violence and battering is perpetrated by a male suspect upon a female victim. Obviously, there are exceptions to this pattern. Domestic violence can be committed by any family/household member upon another, regardless of gender.

Deputy Seth Grant, King County Sheriff's Office
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Source Material

The following materials were used:

- *"Basic Law Enforcement Academy Domestic Violence Class"* booklet 1999, based on and/or developed by:
 - The *"WASPC Model Operating Procedures and Resource Guidelines for Law Enforcement Response to Domestic Violence, revised 1998"*
 - Washington State Criminal Justice Training Commission
 - Washington Coalition Against Domestic Violence
 - Leigh Hofheimer, Washington Coalition Against Domestic Violence
 - Detective Bradley Graham, Tacoma Police Department
 - Scott Santoro, City of Everett – Office of the City Attorney
 - Min Song, City of Tacoma – Office of the City Attorney
 - Officer Cedric Gonter, Auburn Police Department
 - Officer Clark Wilcox, Renton Police Department
- *"Are You Being Stalked?"* pamphlet, developed by the Office on Violence Against Women of the U.S. Department of Justice
- Information presented at the *"Domestic Violence Investigations: Searching for the Hidden Truths"* 2007 seminar cosponsored by the King County VAWA STOP Grant and the Renton Police Department, featuring:
 - Dottie Davis, Deputy Chief of Police, Fort Wayne Indiana
 - Gary Ernsdorff, King County Senior Deputy Prosecutor
 - Will Doyle, King County Deputy Prosecutor
- Washington State Domestic Violence Fatality Review 2006
- The *"Power and Control Wheel,"* developed by the Domestic Violence Intervention Project, Duluth MN
- The *"Coordinated Community Action Model,"* developed by the Domestic Violence Institute of Michigan
- The Washington State Criminal Justice Training Commission Basic Law Enforcement Academy Criminal Law and Domestic Violence Curriculum



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Chapter 1: Understanding Domestic Violence



1.1 Law Enforcement Response to Domestic Violence – Historical Perspective

1.1.1 Traditional Response

The past twenty-five years have brought tremendous turbulence and change within the legal systems affected by domestic violence. These systems include the police, criminal and civil courts, probation, and jails. Traditional legal responses to domestic violence did little, if anything, to hold the batterer accountable for his/her violence. Consequently, many victims chose not to use any of these legal systems as a means of protection from the batterer.

Furthermore, in looking at the historical or "traditional" responses, two common themes tend to emerge regarding domestic violence: the relationship of the parties tended to affect how the assault complaint was handled, and there was little consistency in and among the systems responding to reports of domestic violence. As a result, previous police protocols advocated mediation between the parties, rather than arrest, as the preferred method of dispute resolution. The criminal justice system forced the victim to press charges, similar to stranger assault cases. And, assuming a case was filed and was prosecuted, the victim was often portrayed in court as someone who "did something" to provoke the violent attack and was questioned about her motives for taking the case to court.

Slowly, however, those "traditional" responses have been forced to change. In many jurisdictions across the country change was imposed upon intractable systems by means of lawsuits raising constitutional equal protection claims. In others, violent deaths as a result of domestic violence were the catalyst for change. At the core of this shift in focus has been an implicit challenge to society's belief systems about gender roles and the scope of the legal system's involvement in the family structure, which continues today.



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1.1.2 Development of Domestic Violence Laws in Washington State

One method by which a community states that domestic violence will not be tolerated is through its laws. In 1979, Washington State passed the Domestic Violence Act (DVA) RCW 10.99. This Act emphasized the criminal nature of domestic violence and established domestic violence as a priority for law enforcement response.

The DVA recognized the historical bias against enforcing domestic violence as a crime and expressed the legislative intent that enforcement of the law should be the official response to cases of domestic violence.



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.

A 1983 statewide study found the 1979 law inadequate. The individual discretion of the officer continued to dictate whether an arrest would be made, a citation issued, or nothing done at all. Consequently, the traditional view that treated domestic violence as a private matter, rather than a crime prevailed and few arrests were made.

In 1984, two additional pieces of state legislation expanded upon the protection afforded under the Domestic Violence Act. The Domestic Violence Prevention Act (DVPA) RCW 26.50 created the civil Order for Protection and RCW 10.31 established the mandatory arrest with the probable cause provision. RCW 10.31 requires arrest of the batterer if probable cause exists that an assault occurred within the preceding four hours, whether the officer observed the assault or not.

In 1985, amendments were made to the Domestic Violence Prevention Act. The most crucial of these changes clarified the mandatory arrest with probable cause provision by directing law enforcement to arrest only the primary aggressor. This change was made necessary by the fact that after passage of the mandatory arrest provision in 1984, officers were often arresting both parties at the scene of a domestic violence incident. Clarifying that only the primary aggressor should be arrested solidified the original intent of the law which is to protect victims of domestic violence.

In 1995, comprehensive state legislation was passed that broadened mandatory arrest requirements, expanded the legal definition of domestic violence and strengthened several key areas relating to domestic violence court orders. Amendments to RCW 26.50, the Domestic Violence Prevention Act, clarified court



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procedures and the issuance of orders, added relief provisions and strengthened enforcement of domestic violence court orders. This legislation improved the criminal justice response to victim safety and enhanced perpetrator accountability. In recognition of one common tactic used by abusers against their victims, RCW 26.50 was amended to include stalking behavior to the definition of domestic violence. This statutory change enables victims to obtain Protection Orders prohibiting their abusers from stalking them.

In an effort to make domestic violence orders available in family law proceedings more uniform and enforceable, several procedural changes were made under RCW 26. Many victims seek protection from abuse as part of a larger family law case such as dissolution rather than using the separate Protection Order process. Historically, orders available in family law proceedings were superficial and inconsistent. The resulting legislative amendments enhance victims' ability to obtain effective protection in family law proceedings.

The major domestic violence legislation of 1996 clarified provisions relating to Protection, No-Contact, and Restraining Orders. Several changes include: enforcement of orders not in the computer system under RCW 26.50.115; increased penalties for violation of a No-Contact Order under RCW 10.99.050 and for repeated violations of orders under RCW 10.99, and 26.50; addition of the new crime 'interfering with the reporting of domestic violence' under RCW 9A.36; exceptional sentences for certain types of domestic violence crimes and for violent crimes against pregnant women amending RCW 9.94A.390.

Additional legislation amended RCW 9.41.040 which governs possession of firearms by individuals convicted of crimes. This legislation makes it a felony to possess a firearm if one has been convicted of a variety of listed crimes including domestic violence felonies and certain domestic violence gross misdemeanors. This critical change limits an abuser's access to weapons, requires that the offender go through a petition process and meet several conditions before the right to possess a firearm is reinstated.



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1.1.3 Victim Safety and the Importance of Police Intervention

Domestic violence is referred to by many names in our society. Spouse abuse, wife abuse, marital assault, woman battery, and partner abuse are several examples. Regardless of what it is called, domestic violence is legally defined as assaultive behavior committed by one family or household member against another.

Domestic violence is a pattern of controlling behavior that consists of physical, sexual, and/or psychological assaults. For the victim, these “tactics of terror and assaults” used by their abuser involve systematic patterns of intimidation intended to control their daily thoughts and actions. It is a learned and culturally reinforced pattern of behavior, which, without intervention, becomes more destructive over time.

In our society where many forms of violence exist, it is essential that criminal and civil remedies for domestic violence are administered in a consistent and appropriate manner. Frequently, law enforcement is the first contact victims and perpetrators in domestic violence cases have with the criminal justice system. The importance of law enforcement in the criminal justice system response to domestic violence is critical. If a battered woman chooses to call the police, how her case is handled will often determine her ability to trust the criminal justice system’s response to the violence. Because of the generally escalating nature of domestic violence, effective law enforcement intervention may serve to prevent further violence which could ultimately lead to homicide.

The law enforcement response towards victims of domestic violence should reflect an understanding of the hardships and fear a victim confronts when attempting to leave or survive in an abusive relationship. And, more importantly, law enforcement’s response should focus on holding the abuser accountable for his acts of intimidation and violence. Law enforcement should not find fault with the victim by asking her to be solely responsible for her safety.



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1.1.4 Coordinated Criminal Justice System Response to Domestic Violence

While the consequences of domestic violence to individuals are innumerable, the collective costs to the community are frequently hidden but unending. Domestic violence contributes to the systematic destruction of individuals and the family, the foundations of our society. The community pays a high price in the lost lives, not only of individual family members, but also of others.

Many perpetrators injure not only their immediate victims but also those who may be trying to intervene. Family members, police, children, neighbors, shelter workers, employers and others, are often secondary victims of the batterers violence. The costs to the community are also financial. Domestic violence has been shown to result in lost productivity on the job, increased health care and the criminal justice costs, and lost lives.

With the recognition that domestic violence is a serious crime and social problem has come the understanding that the entire criminal justice system must function in a coordinated manner. Law enforcement, prosecutors, courts, and probation must have comprehensive policies and procedures for responding effectively to domestic violence cases. If any part of the response team is absent or lacking, the entire effort aimed at ending the violence will be rendered ineffective. In fact, system failure can actually escalate the violence by reinforcing the beliefs held by most perpetrators that they will suffer no consequence for their use of violence.

Although, for some batterers, arrest may be an effective deterrent. It is important to note that arrest alone will not stop domestic violence. This is because:

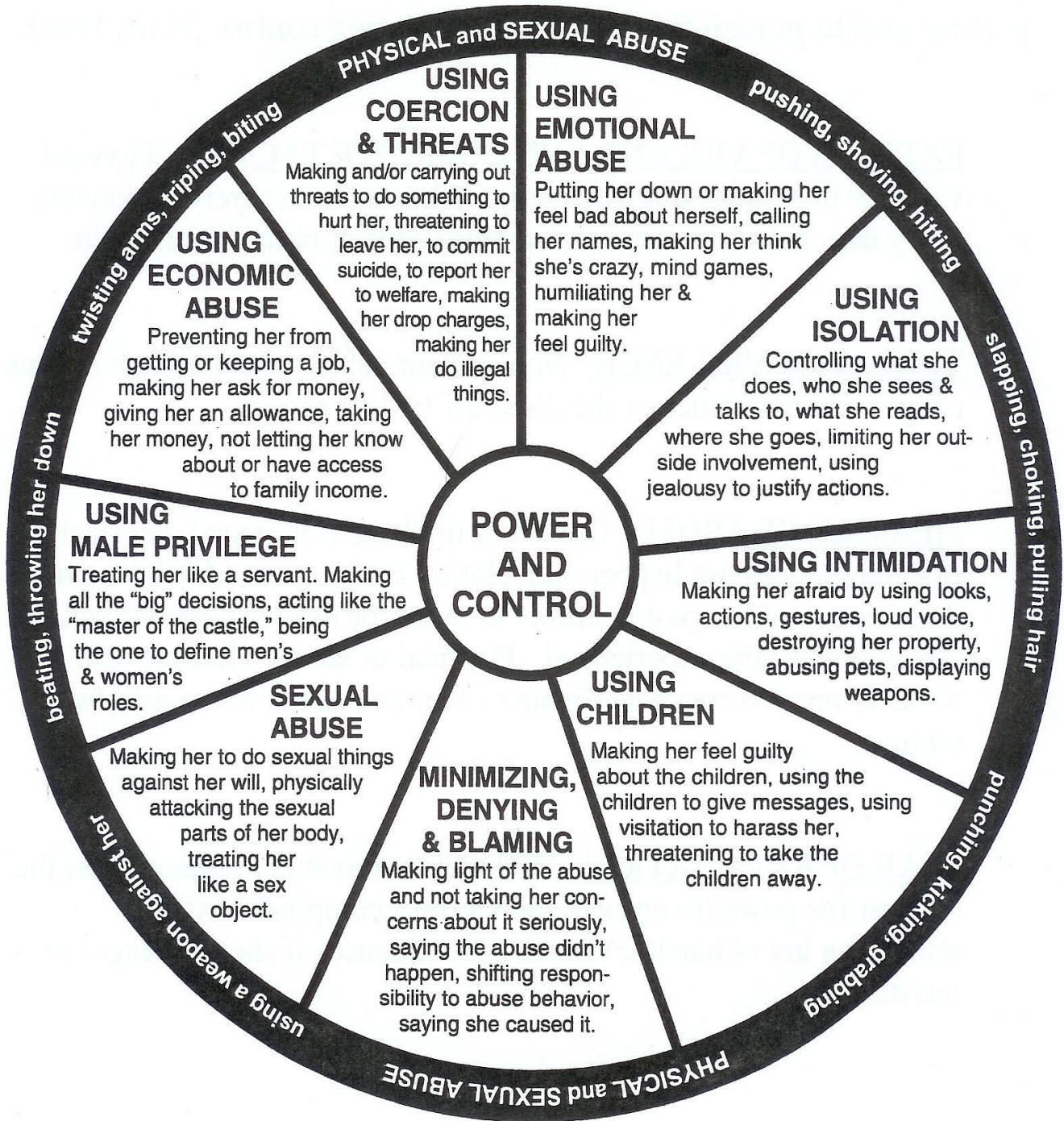
1. Mediation often exacerbates the problem. Since the mediation takes place between people of unequal power, the victim and abuser, any agreements reached by the parties is not equitable.
2. Abusers who are not arrested may interpret this as vindication of their violent behavior.
3. In contrast, abusers who are arrested are given the message that society will not tolerate domestic violence.
4. Similarly, the victims of abusers who are not arrested may come to believe that they are truly helpless.
5. When abusers are arrested, the victims see that their action in calling the police has resulted in stopping the violence.

For others, it is the arrest combined with prosecution, sentencing, incarceration, treatment, and monitoring by probation that brings about change. Mandatory arrest with probable cause is not the solution; it is however, a crucial element in an overall, community-wide response to stop domestic violence.



1.1.5

Power and Control Wheel



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1.2 Domestic Violence Dynamics and Statistics

1.2.1 What is Domestic Violence?

“Battering” is a pattern of violent and coercive tactics whereby one person seeks to control the thoughts, beliefs or conduct of the other partner and to punish this person for resisting control (Hart, 1986).

Pattern of Violent and Coercive Tactics: Physical violence may happen infrequently. Abusers use coercive behaviors every day that allow them to maintain control of the relationship.

Threat of Violence: Non-violent tactics of control are always coupled with violence or the threat of violent actions.

Memory of Abuse: One form of abuse (i.e. sexual, physical or emotional) does not happen in isolation from others. A victim carries the memory of her past attempts to resist the abuser’s control and the consequences she experienced. Physical or sexual violence only has to occur once to create a climate of fear and shape future actions for victims.

Fear of Retaliation: Violence or threat of violence gives the batterer the power to enforce the victim’s compliance while reminding her of harsher violent consequences if she challenges or resists.



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1.2.2 The DV Victim

- From all racial, socioeconomic, educational, occupational, religious, geographic, age, sexual orientation and personality groups
- May or may not have been abused as a child or in prior relationships
- Isolated
- Makes choices based on her assessment of the lethality of the situation
- Uses a variety of mechanisms to cope
- Has belief and hope for change
- Faces barriers to leaving

1.2.3 Causes of Domestic Violence

Learned Behavior:

- Learned through observation
- Learned through experience and reinforcement
- Learned in culture
- Learned in the family
- Learned in communities: schools, peer groups, TV/movies, etc.

Not Caused By:

- Illness
- Genetics
- Alcohol and drugs
- Out-of-control behavior
- Anger
- Stress
- Behavior of the victim or problems in the relationship



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1.2.4 Local and National Statistics 

- 95% of the victims of spousal abuse are women (Bureau of Justice).
- 33% of all female homicides each year are committed by a husband or boyfriend (FBI).
 - From 1995 – 1997 in Washington State, 30% of all female homicide victims were domestic violence related.
- Based on arrest statistics in Seattle – Domestic Violence Pattern:
 - 80% Male to Female
 - 10% Male to Male
 - 6% Female to Female
 - 4% Female to Male
- Although the national and local statistics are similar, it is possible they are skewed due to underreporting by male victims.
 - Statistics are based on arrests and self-reports.
- 47% of men who batter women also batter their children.
 - Percentage of men who batter their victim's children actually increases if the children are not biologically the abuser's – particularly as the kids get older and challenge the abuser's authority and control tactics.
- Children who grow up in violent homes are:
 - 24 more times likely to be sexually assaulted – either within the home or as a result of encounters running away from home.
 - 60 times more likely to engage in criminal behavior as adults – because of perceived lack of consequences.
 - 1,000 times more likely to be abusers themselves – because domestic violence is a learned behavior.
 - Although DV is a learned behavior, it is also a conscious choice. There are many who grow up witnessing DV who never abuse.
- 50% of all 911 calls nationwide are for domestic violence.



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1.2.5 Separation Violence

- Escalation of threats and violence at the time of separation.
- Telling the victim to “just leave” is actually not very helpful unless the victim has a plan in place beforehand.
- Domestic violence is about power and control. Therefore, when a victim decides or tries to leave, the abuser will escalate violence to regain control.
- 73% of battered women seek emergency medical services after separation (Stark et al. 1981).
- 91% of all attacks on women are precipitated by their attempt to leave an abusive relationship.
- Up to 75% of domestic assaults reported to police are made after separation (US Dept. of Justice, 1983).
- Women are most likely to be killed when attempting to report abuse or leave the abuser (Sonkin et al. 1985).
- Approximately one-half of males who kill their wives do so after separation (Hart, 1992).



Leaving is the most dangerous time for a DV victim.

1.2.6 Beliefs Which Support the Use of Domestic Violence in Relationships

- Anger or stress causes violence.
- Somebody has to be in charge.
- If women didn't like it, they wouldn't stay.
- Women are just as violent as men.
- Domestic violence is being exaggerated by feminists.
- Men are more violent naturally.
- Alcohol and drugs cause violence.
- It's caused by bad communication skills.
- I have the right to break my own things.
- Sometimes it's necessary to make your point.
- It's really more of a problem among the poor, uneducated, and minorities.
- I'm not a batterer, I barely touched her.
- I can't change if she doesn't get help, too.
- I have a right to approve of what she does.
- It's caused by women withholding sex.



1.3 The Trap of Domestic Violence

1.3.1 Why She Stays – The Obstacles to Leaving, and Why the Victim May Not Accept Help

- Has misinformation about the case: believes she can “press or drop” charges, believes she doesn’t have to testify, or believes the court order was dropped.
- Some victims are confused about their feelings toward the abuser.
- Decisions change daily; actions depend on resources.
- Many battered women love their partners and want the relationship to continue but the *violence to end*. Their commitment should be respected and affirmed with intervention focusing on stopping the violence.
- Belief and hope for change.
- Hope about batterer’s treatment. Battered women are reluctant to leave when their partners are in treatment. They believe the treatment will motivate them to change and stop battering. Therefore, it is very important that battered women are referred by law enforcement to domestic violence programs so that they can be informed about treatment programs for batterers and evaluate whether these programs are likely to effect the change that will make life safer for them.
- May be under the influence of drugs or alcohol, diminishing victim’s communication and safety planning abilities; use may either be forced by the perpetrator or used by the victim as a coping mechanism.
- May feel safe with you present; victim’s anger and frustration with the perpetrator may carry into her interactions with law enforcement as she tries to make the violence stop.
- May revert to survival techniques if the perpetrator is listening to your conversation or returns to the scene; victim knows she will pay a price for reporting the incident.
- Witnesses/neighbors may have called 911 without the victim’s knowledge; victim may be afraid to talk fearing further abuse for discussing the violence or cooperating with law enforcement.
- She could have initiated the call just to make the perpetrator stop the violence; then when the violence stops, the victim no longer wants contact with police.
- May have warrants and is afraid she will go to jail.
- May be an undocumented immigrant and fears deportation.
- If children are present, victim may not want to give information.
- Fears communication or translation by abuser, children, friends or family.
- Fear of retaliation against the children, friends, or family members.



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- Partner may threaten to kill her or other family members if she leaves, threaten to kill himself or escalate his violence in an attempt to hold her in the relationship.
- Many victims try to leave only to be followed, pursued, harassed, terrorized and re-assaulted. A large number of severely violent incidents including homicides occur after the victim leaves the relationship.
- Fear of losing children or placing the children in danger, either in a custody battle or because of partner's threats.
- Fear that no one will believe her. Batterers are often respected and popular members of the community who keep their violence and controlling behaviors secret from the public. Fear of being blackmailed; partner may have threatened to reveal to the authorities any wrongdoing such as alcohol or drug abuse. And, in same sex relationships, the fear of job loss or losing one's children if the victim's sexual orientation is revealed.
- Fear of losing her support systems. In order to escape their partner's threats of retaliation, many battered women have to leave the community which provided them with support. This is especially difficult for women whose ethnic, racial and/or cultural heritage, language and experience are affirmed by her community (i.e. Asian, African-American, Jewish, Latina, and Native American).
- The victim is responsible for one or more small children and lacks economic resources. She may not have access to the family economic resources or fears she will lose her own job and ability to support herself and her children.
- The victim may simply wish for the violence stop, and may not have the economic resources to survive if the abuser is incarcerated for a lengthy period.
- The batterer has literally isolated her. For example, a batterer may prohibit the battered woman from using the phone, may insist on transporting her to work, may read her mail, and may forbid her from seeing family and friends.
- **Economic Pressures**
 - May lack job skills or formal education.
 - May experience housing discrimination against women with children. May lack ability to pay security deposit.
 - May face losing house, furniture and all other resources held in the batterer's name.
 - May face difficulty in collecting child support or possibility of losing custody of the children.
 - May fear losing job because of the missed work and disruptions caused by leaving or the need to remain in hiding.
 - Partner may threaten to withhold support, to interfere with her employment and advise prospective landlords that she is not credit-worthy.



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▪ **Family and Community Pressures**

- May experience pressure to keep the family together for personal, cultural, and/or religious reasons. Many cultures rely heavily on the family unit for survival, and leaving could mean the end of this support system for her perceived betrayal of her community. Many religious values are not accepting or supportive of divorce.
- May perceive leaving as her failure to make the relationship work; she may face being ostracized by friends who feel uncomfortable choosing which person in the couple they should support.
- May experience social stigma when the abuse in the relationship has been revealed publicly.
- May value children's right to both parents and perceive leaving as denying them that right.
- May not know about available resources, believes she is alone and that no one can help her.
- May perceive available resources as unsafe or not sensitive to her particular needs. For example, non-English speaking women, Jewish women, undocumented women, lesbians or elderly women.
- May face a lack of available shelter and/or other resources.
- May face lack of access to Legal Counsel, Advocates and Courts: if a battered woman is fortunate enough to have shelter of some sort, she still needs a trained advocate or attorney to facilitate her access to the civil and criminal courts. But most battered women have no way of obtaining such assistance, particularly in the critical days and weeks immediately following flight from the batterer. Resources for advocates in the State of Washington are limited and overwhelmed with victims needing assistance. The lack of affordable legal services and other advocates leaves battered women navigating the court and social service systems on their own.
- Family and friends may not believe the victim's stories of violence, and may pressure her again to "give him another chance."

▪ **Lack of faith in the criminal justice system:**

- May have had negative results with criminal justice system in the past.
- Fear of an inadequate or harmful response by the criminal justice system and other institutions.
- The victim you are interviewing may have previously cooperated fully with law enforcement and the courts, only to have the case dismissed by a "reluctant" prosecutor.
- She may have received a severe beating by her abuser for cooperating with law enforcement and the criminal justice system in the past.



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1.3.2 **When *Do* Battered Women Leave?**

- Leaving is a process which must include safety and alternative resources for survival.
- The first time a battered woman leaves it may be a test to see whether the batterer will actually get some help to stop his violence.
- When he is violent again, she may leave to gain more information about resources available to her.
- She may then reconcile and begin to get some economic and educational resources together in case she decides she must later leave for good.
- She may next leave to break out of the isolation in which the batterer has virtually imprisoned her.
- The most likely predictor of whether a battered woman will permanently separate from her abuser is whether she has the economic resources to survive without him.
- Most battered women eventually leave.



1.4 The Domestic Violence Abuser

1.4.1 The DV Perpetrator

- Usually male (95% of DV victims are female)
- From all age, racial, socioeconomic, educational, occupational, geographic and religious groups
- 80% have seen father or male authority figure abuse mother
- Make choice to control the victim
- Control children, too
- Blame others or outside factors
- Minimize, deny, and lie
- Isolate the victim
- Has good qualities, too

1.4.2 Common Behaviors Among Batterers

- Denies the existence of or minimizes the use of violence
- Extreme jealousy, possessiveness and a need to control
- Refuses to take responsibility for the violence and blames violence on alcohol or drugs, frustration, stress or the victim's behavior
- Abuses animals
- Destroys property – targeted acts
- Witnessed father abusing mother
- Holds rigid, traditional views of gender roles

1.4.3 Common Behaviors Among Severely Violent and Life-Threatening Abusers

- Makes threats to kill
- Frequent physical assaults
- Repeated and severe sexual assaults
- Infliction of severe injury
- Owns or has access to weapons
- Frequent consumption of drugs or alcohol
- Uses violence outside the home



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1.4.4 Manipulation Cues

When the abuser asks the following questions of law enforcement officers, they should be aware that the abuser is looking for an opening to manipulate:

- "Are you married?"
- "Do you have a girlfriend?"
- "Do you have children?"
- "What would you do if...?"
- "What do you think about...?"
- "How would you feel if...?"
- "Would you let your partner talk to you this way?"
- "Are you 'in charge' at your house?"



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1.4.5 Risk Markers for Homicide by the Abuser

1. Strong belief in irrevocable ownership and entitlement of the other partner.

- Obsessive about the battered woman; often monitors every aspect of her life.
- Extreme jealousy and constant suspicion about battered partner's alleged infidelity; suspicions are most often without foundation.

2. Articulation of fantasies and plans for homicide and/or suicide and parental abduction of children.

- Specific plans for killing the battered women; often articulated or inferred.
- Killing or maiming of pets.
- Threats of homicide of battered woman or members of her support system.
- Reviews of Washington State DV cases show that when the abuser threatens suicide, there is a higher risk of homicide (Washington State Domestic Violence Fatality Review 2006).



3. Sharply increased risk-taking; acting without regard to heightened adverse consequences.

- Public exposure.
- Conduct involving professional, personal embarrassment.
- Deviation from the known pattern of violence.
- Assaults on the battered women in circumstances or with such severity that risks serious criminal consequences.

4. Centrality of battered partner.

- Abuser has incapacity to manage everyday life; requires battered woman to organize his life, provide primary care for perpetrator, and resolve conflicts with significant others (i.e. family members, employers, neighbors).
- Places partner on pedestal; highly unrealistic in adoration of battered woman, her attributes and skills.

5. Profound despair precipitated by fear of losing battered woman.

- Inability to envision life without the battered partner.
- Acute clinical depression, hopelessness.
- Suicide threats.
- Death as a "solution" or transcendence.

6. History of weapons usage and stalking.

- Prior use of knives and guns in acts of domestic violence.
- Ready availability of knives and guns.

7. Severe sexual abuse.

8. Repeated history of prior violence.

9. Hostage-taking.

10. Access to the battered woman and/or her family members.



1.5 Shelters for Battered Women and Their Children?

"Sheltering is the most important service a community can offer to a battered woman and her children. Sheltering means dealing with the whole woman, and her children, because battering affects her whole being, and she has many needs (J. Taylor, Womenscare Shelter Newsletter, Bellingham, WA, 1983)."

1.5.1 Introduction

For many years, a movement to provide safe space and vitally needed support services to battered women and their children has led to the establishment of battered women's shelters throughout the United States. At present, approximately 40 shelters have opened in Washington State, and over 800 are serving battered women nationwide. The services offered by these shelters range from individual counseling, to child care, to legal advocacy—helping battered women to follow up on their cases, and obtain court orders.

In addition, other services have been created which provide safe services for lesbians, gay men, ethnically and racially diverse communities such as Latinas/Hispanics, African Americans, and immigrant/refugee populations. The availability of these services is crucial in ending the isolation and the secrecy battered women experience while trying to survive the violence in their lives.

Consequently, shelters are a valuable resource offering physical safety and emotional support for battered women and their children, as well as for law enforcement responding to domestic violence calls.

Most shelters are community based, founded by formerly battered women with the support of volunteers, and other community groups. In most cases, they began with little or no financial backing, relying for their survival instead on the energy and commitment of volunteers. Today, unfortunately, financial support is still drastically insufficient, and most shelters frequently have to turn away battered women and their children because they have no emergency space available.



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1.5.2 Shelter Services and Benefits for Battered Women

Shelters offer a range of vital services and benefits to help battered women sort out their options and begin to take control of their lives. Services will vary from jurisdiction to jurisdiction, so law enforcement officers will need to familiarize themselves with the specific services offered by their local shelters. In general, however, most shelters offer the following basic services:

1. **Safety and Confidentiality:** Fundamental physical safety is perhaps the most important benefit shelters provide for battered women; safety is the starting point, the first and necessary condition for victims' healing and recovery. By going to a shelter, a battered woman can be free from the weekly or even daily physical and dehumanizing abuse she has been experiencing at home. She will not have to fear waiting for the phone to ring or the front door to open. To ensure the safety of the women and children in residence, most shelters do not give out their address either to the general public or to service providers. It is essential for law enforcement officers to protect this CONFIDENTIALITY.
2. **Peer Support:** In place of the isolation and disbelief which battered women commonly experience, shelters offer an environment of understanding and support. In a shelter, a battered woman will not have to explain over and over to unsympathetic or unresponsive people what she has experienced or is feeling. Instead, she will receive empathy and support. Sharing stories of abuse and common problems with other shelters residents provides battered women with validation and friendship.
3. **Empowerment:** The underlying goal of shelter programs and services is to empower battered women so that they can gain control of their own lives, instead of being controlled by their partner's abusive personalities and behavior. To achieve this goal, most shelters operate on a peer support, self-help model which is designed to encourage battered women to make decisions about their lives and develop self-esteem and self-reliance.
4. **Practical Services:** In addition to providing safety, understanding, and encouragement, shelters also offer battered women a wide range of the practical services they may need to make positive changes in their lives. Through the shelter's advocacy services, they may receive legal assistance, court accompaniment, and aid in dealing with social service and housing agencies. Referral services can provide further information on medical care, job counseling and placement, housing, and other local resources. One-to-one counseling is also usually available for both women and their children.
5. **Nonresidential Services:** Shelters may also offer their basic services on a nonresidential, as well as a residential, basis. Services such as crisis counseling, support groups, advocacy and referrals can help battered women sort out their options whether or not they are thinking of leaving their abusive partners or



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planning to relocate. Most shelters have 24-hour hotlines which women can call for crisis counseling, referrals, and information.

6. **Children's Services:** Many shelters also provide services for the children of battered women. Services may include cooperative child care, support groups, group outings, and referrals for medical and other social services. When necessary, most shelters will also make arrangements with the local school system to ensure that the children are able to continue their education while at the shelter.



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1.5.3 How to Utilize Shelters

Battered women in need of emergency shelter should be encouraged to call their local shelter's 24-hour hotline for crisis counseling and emergency shelter information. However, law enforcement officers should be aware that although most shelters are equipped to take in women and children on a 24-hour basis, they are often full. In some communities, emergency requests for shelter are handled through back-up systems such as private "safe homes" or hotel vouchers.

Officers also should be aware that every shelter operates independently and has its own set of eligibility rules. Some shelters will take women with children before single women, while others take residents on a first-come, first-served basis. Some shelters have restrictions on admitting teenage children. *Every shelter is different.*

To provide accurate information while protecting the confidentiality of shelters, law enforcement officers should have the names and emergency numbers of their local shelters available for distribution to battered women. To obtain the phone numbers of your local shelters, call the appropriate regional domestic violence program.

Even if a battered woman is not in need of emergency shelter, law enforcement officers should inform her of the existence of her local shelter, its phone number and the residential and nonresidential services it offers. As mentioned above, counseling and referrals can help a woman sort out her options in the present situation, and in the event of a future emergency, she will know the services and resources available in her area.



1.5.4

COORDINATED COMMUNITY ACTION MODEL

This Model demonstrates, in abbreviated form, ways communities can accountably act to support battered women and children, and hold batterers accountable for their behavior. It is not a definitive representation. This Model primarily identifies heterosexual males as perpetrators of domestic violence (DV), as they comprise 95% of the batterers in this country. This Model was developed by Mike Jackson and David Garvin with the feedback of over 118 reviewers. We are grateful for their input, and acknowledge the Domestic Abuse Intervention Project for the wheel format. Permission to reproduce is given if there are no changes and credit is given. Please make copies and distribute them for your public education efforts (to obtain an 18 x 24 poster of this Model contact DVIM at 313 769-6334). We welcome your feedback for future editions.



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Chapter 2: Liability in Domestic Violence



2.1 Liability in Domestic Violence

2.1.1 The Seven Most Common Areas of Officer Liability

1. Failure to take proper actions to protect a citizen.
2. Failure to appropriately enforce a court order protecting a victim of domestic abuse.
3. Failure to respond at all or in a timely manner.
4. Failure to provide information to a victim as required by law.
5. Arresting a citizen without establishing probable cause.
6. Exhibiting a pattern of differential treatment of application of the law to domestic assault cases.
7. Failure to train.

2.1.2 Officer Immunity

RCW 10.31.100(15), 10.99.070 and 26.50.140 govern liability in relation to law enforcement response to incidents of domestic violence.



RCW 10.31.100(15) states: "No police officer may be held criminally or civilly liable for making an arrest pursuant to RCW 10.31.100(2) or (9) if the police officer acts *in good faith and without malice.*"

RCW 10.99.070 states: "A peace officer shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of a court order, or any other action or omission *in good faith* under this chapter arising from an alleged incident of domestic violence brought by any party to the incident."

RCW 26.50.140 states: "No peace officer may be held criminally or civilly liable for making an arrest under RCW 26.50.110 if the police officer *acts in good faith and without malice.*"

The Washington State Supreme Court case of Roy vs. City of Everett, 118 Wash. 2d 352, 823 P.2d 1084 (1992), held that these protections do not completely immunize from liability for damages police officers who fail to enforce the law. The court further reiterated that victims of domestic violence must receive equal protection under the law and that individual officers and the government agencies employing them will be held accountable when the failure to enforce the law results in injuries or death of the victim.



Chapter 3: Domestic Violence Law



3.1 Domestic Violence Law

3.1.1 Sources of DV Rules

- RCW 26.50.010 – Domestic Violence Defined
- RCW 10.31.100 – Misdemeanor Presence Rule (Mandatory Arrest)
- RCW 10.99.030(6)(A) – Mandatory Arrest
- RCW 10.99.010 – Legislative Intent

These are just a few. There is no single “DV” law. Law enforcement officers’ abilities and responsibilities come from many different RCWs.

3.1.2 Legislative Intent



RCW 10.99.010 states: “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.”



The legislature had two goals in mind when drafting the domestic violence laws:

1. Victim safety
2. Batterer accountability

Also recognize that officers strive to meet this legislative intent by doing three things:

1. Stopping the immediate violence
2. Removing the abuser
3. Providing the victim with resource options

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3.1.3 Legal Definition of Domestic Violence



RCW 26.50.010(1) states: "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member."

The legal definition:

- Addresses only part of what occurs.
- Does not describe the victim's experience of abuse.
- Does not describe how batterers maintain control over their partner.

3.1.4 "DV" is a Label

Suspects are never charged with the crime of "DV". Law enforcement officers do not arrest anybody for "Domestic Violence." When officers arrest a suspect in a DV situation, they arrest the suspect for committing a regular crime (i.e. Assault, Harassment, etc.) that is happening within a DV situation.

Law enforcement officers still must develop Probable Cause – just like any other criminal case. However, once the "DV" label is attached to the situation, additional rules apply for law enforcement.

How do officers know when the situation is a DV situation? It is all based on whether or not the connection between the victim and suspect is a "family/household relationship" as defined by RCW.



3.1.5 Family/Household Relationship

The Wording of the Law



RCW 26.50.010 states:

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

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

Explanation:



<u>Now or ever in the past:</u>	<u>Both Must Be:</u>
Child in Common	(any age)
Married (spouses)	(any age)
Parent-Child/Grandparent-Child/Step-Parent-Child	(any age)
Adult Roommates	(18 y.o.)
Related by Blood or Marriage (relatives)	(18 y.o.)
Dating Relationship	(16 y.o.)

The legislature believed that these people needed protection without having to “press charges” against their abuser.

Now or ever in the past – because the violence doesn’t end just because the relationship does.

The parent-child relationship (including grandparent or step-parent) must be a biological or legal relationship to qualify.



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3.1.6 **Mandatory Arrest**

Normally, officers have discretion (a choice) whether to arrest a suspect or not. In DV situations, whenever an arrest is mandated by law, the responding officer **must** arrest the suspect. Mandatory and discretionary arrest authority is governed by RCW 10.31, 10.99, and 26.50.



RCW. 10.31.100 states: "A police officer **shall arrest and take into custody**, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that..."

When the RCW says "shall" it means there is no choice.

There are two times when mandatory arrest is triggered. In this handbook, we'll refer to them as situation "A" and "B".

Mandatory Situation A – "The Four-Hour Rule"

The Wording of the Law



RCW 10.31.100 states: "The person is sixteen years or older and within the preceding four hours has assaulted a family or household member as defined in RCW 10.99.020 and the officer believes: (1) a felonious assault has occurred; (2) an assault has occurred which resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; (3) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death. When the officer has probable cause to believe that family or household members have assaulted each other, the officer is not required to arrest both persons."

Explanation:



Mandatory Arrest If. . .

- Suspect is 16 or older, **AND**
- Occurred within the last four hours, **AND**
- Family/Household relationship, **AND**
- The crime was felonious assault, assault with injury, or action to cause fear of imminent serious bodily injury/death.

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There are four triggers to mandatory arrest in Situation A, and all four must be met for it to be mandatory – if not all triggers are met, an arrest may still be made as long as there is probable cause for the crime.

The first three of these criteria are relatively easy to determine. Is the suspect old enough? Did the crime occur less than four hours ago? Is this a DV situation? These are easy questions to answer.

The fourth criteria is a bit more difficult. Not every crime will satisfy this one. Not all crimes qualify. Think of this fourth criteria as “the Gatekeeper.” The Gatekeeper decides which kinds of crimes make it through the gate and which ones do not. There are many crimes that can occur within a DV situation that will not fit this fourth criteria, and thus be a discretionary arrest.



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Mandatory Situation B – “Certain Court Order Violations”

The Wording of the Law



RCW 10.31.100 states: “An order has been issued of which the person has knowledge under RCW 26.44.063^[1], or chapter 7.90^[2], 10.99^[3], 26.09^[4], 26.10^[5], 26.26^[6], 26.50^[7], or 74.34^[8] RCW restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence, or restraining the person from going onto the grounds of or entering a residence, workplace, school, or daycare, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location or, in the case of an order issued under RCW 26.44.063^[1], imposing any other restrictions or conditions upon the person.”

RCW 10.99.055 states: “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^[3] by arresting and taking the defendant into custody, pending release on bail, personal recognizance or court order, when the officer has probable cause to believe that the defendant has violated the terms of that order.”

RCW 26.50.110 states: “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^[7], chapter 7.90^[2], 9.94A^[9], 10.99^[3], 26.09^[4], 26.10^[5], 26.26^[6], or 74.34^[8] RCW...that restrains* the person or excludes the person from a residence, workplace, school, or day care, or prohibits the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, if the person restrained knows of the order.”

1. *Temporary Child Abuse Restraining Order*
2. *Sexual Assault Protection Order*
3. *DV No-Contact Order*
4. *Divorce Restraining Order*
5. *Child Custody Restraining or Protection Orders*
6. *Parenting and Custody Orders*
7. *DV Protection Order*
8. *Vulnerable Adult Protective Order*
9. *Sentencing Orders*

* Restraint provisions include those that prohibit acts or threats of violence against, or stalking of, a protected party, or those that prohibit contact with a protected party (RCW 26.50.110(1)(a)(i)).



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Explanation:



Mandatory Arrest If. . .

- With knowledge, the suspect:
 - Violates *any listed court order* by committing an act or threat of violence against, or stalking of, the petitioner, **or**
 - Violates *any listed court order* by going onto the grounds of or entering a residence, workplace, school, or daycare, **or**
 - Violates *any listed court order* by engaging in prohibited contact with the petitioner, **or**
 - Violates a *No-Contact Order* in any way, **or**
 - Violates a *Child Abuse Restraining Order* in any way.

This is the second of the two must-arrest situations under the RCW.

Notice that for many orders this is more about **how** the order was violated. For example, if the order type is a Protection Order or a Restraining Order and the suspect violates the order by assaulting the petitioner, it becomes a mandatory arrest.

For officers to arrest the respondent, the officers must establish that the respondent had knowledge that the order existed. The law does not require that the order be served but most prosecutors use that as a filing standard.

3.1.7 Mandatory Arrest When the Suspect is Not Present

If the suspect has fled, and the arrest is mandatory, you must make a good faith effort to find and arrest the suspect:

- Investigate and try to locate the suspect
- Utilize other agencies
- Issue an "Attempt to Locate" for the suspect's vehicle(s)
- Have victim or others call 911 upon suspect's return

3.1.8 "Three Magic Questions"

Officers should go through a logical, systematic thought process to determine what enforcement action should be taken at a DV call. The "Three Magic Questions" is a system for thinking through a DV call. See the handout on the next two pages.



3.1.8

The Three Magic DV Questions

Question #1 – Is there a crime?

YES / NO

- *Do you have Probable Cause?*
- *Are all the elements of the crime(s) met?*
- *Who is the Primary Aggressor?*
- *Here are some of the most common DV crimes:*
 - Assault
 - Harassment
 - Violation of court orders
 - Stalking
 - Malicious Mischief
 - Interfering with reporting of DV

Question #2 – Is it a Family/Household Relationship (RCW 10.99.020)?

YES / NO

- *Now or at any time in the past , any one of the following connections:*
 - Child in Common (any age)
 - Married (spouses) (any age)
 - Parent-child / grandparent-child / step-parent-child (any age)
 - Adult roommates (18 y.o.)
 - Related by blood or marriage (relatives) (18 y.o.)
 - Dating (16 y.o.)

Question #3 – Is it a Mandatory Arrest?

YES / NO

- *One of these two situations:*

- A [
- Suspect is 16 or older , **AND**
 - Occurred within the last four hours, **AND**
 - Family/Household relationship, **AND**
 - The crime was felonious assault, assault with injury or action to cause fear of imminent serious bodily injury/death.

- OR -

- B [
- Qualifying violation of court order. (Not all violations will trigger the mandatory arrest!)



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3.1.8

Question #1 Crime?	Question #2 DV Situation?	Question#3 Mandatory?	What You Do:
No	No	No	No report is required, but you may choose to document the situation if you want.
No	Yes	No	A report is required – it’s a family/household relationship!.
Yes	No	No	You have a crime, so you <i>should</i> make an arrest (or cite & release). And any time you do that, a report is part of the package. You could also choose not to arrest/charge the suspect – You do have Officer Discretion. A report is still strongly recommended, though.
Yes	Yes	No	You have a crime, so you <i>should</i> make an arrest (or cite & release). You could also choose not to arrest/charge the suspect – You do have Officer Discretion. A report is required no matter what – it’s a family/household relationship!
Yes	Yes	Yes	You have a crime, and it’s a mandatory arrest, so you are required to make a physical arrest and booking. And any time you do that, a report is part of the package. But you were going to write a report anyway, because it is required any time you have a family/household relationship!

- Ask yourself the three magic questions in the order listed above.
- Notice how if you answer “no” to #2, you will never get to #3. It can’t be a mandatory arrest if it’s not a “DV situation.”
- Also notice that you do the “age test” twice. In both questions #2 and #3, you have to consider the ages of the people involved.
- At every domestic disturbance call, you are going to employ your problem-solving skills, offer good advice, educate everyone about DV law, and provide resource materials to the victims.



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3.1.9 Victim Notification - RCW 10.99.030

What must be said – Peace officers must tell the victim of all reasonable means to prevent further abuse, the availability of a shelter, or other services in the community, and give notice of the legal rights and remedies available.

Written notice to be given – The written notice must include the statement:



If you are the victim of domestic violence, you can ask the city or county prosecuting attorney to file a criminal complaint. You also have the right to file a petition in superior, district, or municipal court requesting an Order for Protection from domestic abuse which could include any of the following:

- a) An order restraining your abuser from further acts of abuse
- b) An order directing your abuser to leave your household
- c) An order preventing your abuser from entering your residence, school, business, or place of employment
- d) An order awarding you or the other parent custody of or visitation with your minor child or children
- e) An order restraining your abuser from molesting or interfering with minor children in your custody. The forms you need to obtain a Protection Order are available in any municipal, district, or superior court.

Information about shelters and alternatives to domestic violence is available from a state-wide twenty-four hour toll-free hotline at 1-800-562-6025. The battered women's shelter and other resources in your area are (*include local information*).

What may be done – The peace officer may offer, arrange, or facilitate transportation for the victim to a hospital for treatment of injuries or to a place of safety or shelter.



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3.1.10 Primary Aggressor

Law enforcement officers shall arrest the person who the officer believes to be the primary physical aggressor. The "Primary Aggressor" is the person who acted most aggressively, not necessarily the person who started it or threw the first punch. The word "Primary" in the term "Primary Aggressor" means MOST, not FIRST.

Ask yourself. . .

- "Who is the problem here?"
- "Who is the worst of the two?"
- "Who is the person raising the fight to a higher (more dangerous) level?"

Primary Aggressor - What to Consider. . .

In making the Primary Aggressor determination, the officer shall make every reasonable effort to consider:

- The intent to protect victims of domestic violence under RCW 10.99.010.
- The comparative extent of injuries inflicted or serious threats creating fear of physical injury.
 - It is possible that the primary aggressor may be the only one with injuries because the victim acted in self defense before being assaulted first.
- The history of domestic violence of each person involved, including whether the conduct was part of an ongoing pattern of abuse.
 - Just because one of them has gone to jail in the past doesn't mean they are the primary aggressor this time – it is part of the story, but not an end-all decision-maker. Consider the totality of the circumstances.
- The comparative sizes of the parties involved.
 - May be used to determine how much force was "necessary" and "reasonable."
- The demeanor of the parties involved, paying attention to excited utterances and emotional state.
 - Many victims will use accountable language when describing what happened ("Yes, I hit him." "It's my fault because...") because they are used to being blamed for everything.
 - Many abusers will use blaming language ("She didn't have dinner ready..." "She's out of control" "He knows that makes me mad...") because they are used to making it everyone else's fault.
- Any weapons used or threatened by either party.
- Claims of self-defense or defense of others.



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- In Washington, there is no “duty to retreat” before using force in self defense, so long as the person is in a place where he/she has a legal right to be.
- Think about this: A police officer is trained to recognize pre-attack indicators, just like a DV victim will recognize when they are about to be assaulted because of past incidents. A police officer doesn’t have to wait to be assaulted in order to respond and prevent the assault by using force of their own – neither does a DV victim.
- Witness statements.

Primary Aggressor – Don’t Get Off Track. . .

We should always consider the totality of the circumstances, but certain factors should not prevent us from enforcing the law:

- The marital status of the parties.
 - Being married doesn’t make violence OK.
- Verbal assurances that the violence will stop.
- Use of drugs/alcohol by either party.
 - Just because a person is intoxicated, it does not automatically mean that the person is lying.
- Denial that the assault occurred where evidence suggests otherwise.
 - Look for third-party witnesses, obvious signs of injury, 911 tape, etc., to substantiate arrest.
- A request by the victim not to arrest the subject.
 - We are acting for victim safety whether they want us to or not.
- The racial, cultural, social, professional position or sexual orientation of the victim or the suspect.
- Ownership or tenant rights of either party.



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3.1.11 "Mutual Combatants"

Arresting both parties as "mutual combatants" is strongly discouraged – but not absolutely prohibited.

It is discouraged because dual arrests are more difficult to prosecute, therefore making the dismissal of both cases more likely. If both subjects are arrested for assaulting each other, neither can testify in court without incriminating themselves, and both cases will probably be dismissed.

When a law enforcement officer has probable cause to believe that the parties have assaulted each other, the officer is not required to arrest both parties. The officer shall arrest the person whom the officer believes to be the primary physical aggressor (RCW 10.31.100 (2) (c)).

In some domestic violence situations, *both* parties may have behaved illegally. For instance, as a law enforcement officer, you may recognize that both parties have committed the crime of assault against each other in the course of the incident. The law is ordering you to evaluate the situation and arrest the primary aggressor. So for this particular incident, you will focus your enforcement efforts on the worst of the two. You are being ordered to pick the "big fish" and let the little fish go. You will arrest the primary aggressor, and the other person will be the victim for this case.

This doesn't prevent the police from arresting both parties if separate crimes have occurred (i.e. malicious mischief when the ex-girlfriend slashed the tires on the car, assault when the ex-boyfriend retaliated by punching her in the face). If both parties are to be arrested, it is necessary to document probable cause for each arrest.



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3.1.12 Stalking

Is there a pattern? Is this just the latest event in a long list of court order violations or other crimes? Does the crime of Stalking (RCW 9A.46.110) apply to this on-going situation?

A stalker can be someone the victim knows well or not at all. Statistically, most stalkers know or have been involved with the victim they stalk. About 75% of stalking cases are men stalking women, but men do stalk men, women do stalk women, and women do stalk men.

Approximately one in 12 women and one in 45 men are stalked in their lifetimes. 1.4 million people are stalked every year in the United States.

Stalking Behaviors

- Making annoying or repeated phone calls, including hang-ups
- Sending unwanted cards, gifts, emails, or letters
- Following the victim
- Using technology, like GPS, to track the victim's whereabouts
- Monitoring the victim's phone calls or computer use
- Vandalizing the victim's car, home, or other property
- Reporting the victim to authorities
- Showing up at the victim's place of work or wherever they are
- Harassing and threatening friends, co-workers, or family members
- Obtaining information about the victim via online searches, private investigators, going through garbage, or contacting people that know the victim
- Taking or destroying mail
- Sending or leaving dead animals
- Taking photographs of the victim
- Making threats, or doing other things that frighten the victim

Gathering Stalking Evidence from the Suspect

- Photographs of the victim
- Writing and diaries that describe the victim's activities
- Personal items belonging to the victim
- Keys from the victim's house, car, or place of work
- Cameras, binoculars, video recorders
- Pornography



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Gathering Stalking Evidence from the Victim

- Taped messages from the suspect
- Letters, objects, or "gifts" left by the suspect
- Evidence of phone tapping
- Photographs of vandalized property
- Phone records and 911 calls
- Information from neighbors, friends, co-workers and family members

Documentation in the Stalking Report

- Any prior threats made (veiled or specific)
- Any actual pursuit or following of the victim
- Any history of violence against the victim or others
- Any information regarding the suspect's tendency towards emotional outburst or rage
- Prior mental illness history
- Substance abuse problems
- Possession or knowledge of or fascination with weapons
- Any history of Protection Order violations
- Any annoying phone calls
- Any unsolicited correspondence (threatening or non-threatening)
- Threats of murder and/or suicide
- Any acts of vandalism or arson
- Is the victim in fear?



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3.1.13 Strangulation

Injuries from strangulation, like many kinds of injuries from domestic abuse, are “undetectable.” Brain death occurs if strangulation persists for 4 to 5 minutes. Any time officers believe that strangulation occurred, medical aid should be summoned for the victim.



Strangulation is not the same thing as choking. Strangulation is defined in the RCW as: “to compress a person's neck, thereby obstructing the person's blood flow or ability to breathe, or doing so with the intent to obstruct the person's blood flow or ability to breathe.” Choking is an internal obstruction of the airway (trachea).

Many suspects will not admit that they “strangled” the victim. However, they may admit to it by other names. Ask these questions of the suspect:

- “Have you ever placed your hands around your partner’s neck while fighting?”
- “Have you ever choked your partner?”
- “Have you ever placed a rope, necktie, cord, forearm, or any other object around your partner’s neck or throat to restrain them?”

Three Types of Strangulation

1. Hanging
2. Ligature – use of cords
3. Manual strangulation

Medical Information for Strangulation

- *Obstruction of carotid artery:* Most common 11 lbs. of pressure for 10 seconds, unconsciousness, but regained in 10 seconds if pressure released
- *Obstruction of jugular vein:* Second most common, 4.4 lbs. of pressure completely obstructs
- *Obstruction of trachea:* 33 lbs. of pressure, fracture of trachea, and death

Symptoms and Signs of Strangulation

- Outward trauma may not be visible
- Neck pain, sore throat
- Scratch marks, tiny red spots, red linear marks or bruising
- Hoarseness, loss of voice
- Difficulty swallowing
- Light headed or head rush
- Fainting or unconsciousness
- Nausea or vomiting



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- Loss of bodily function
- Red eyes
- Rope or cord burns
- Neck swelling
- Miscarriage

Interviewing Questions Regarding Strangulation

- Did the offender use one or two hands?
- How much force was used?
- How hard did he grab the victim's throat?
- Was the victim shaken simultaneously while being strangled?
- How much shaking? (Little to whipping back and forth)
- Did the victim have any difficulty breathing?
- Did the victim report urinating or defecating?
- Did the victim feel light headed, faint or lose consciousness?
- Did the victim complain of nausea or report vomiting?
- Any complaint of pain, discomfort, trouble swallowing, or raspy voice?
- Any prior incidents of strangulation?
- Any pre-existing neck injuries?
- Will the victim release medical records?
- Were the visible injuries photographed clearly?
- Have follow-up photographs been taken? (1-3 days after incident)
- If an object was used to strangle victim, was it collected and photographed?
- Was the suspect wearing any rings?
- Were there any corroborating witnesses to the incident?

Suffocation

Suffocation was added to the RCW in 2011 and bears many similarities to strangulation in terms of its impact and investigation. Many of the above factors should be considered in investigating suffocation incidents as well.



Chapter 4: Court Orders



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4.1 Court Orders

4.1.1 Introduction

There are many types of court orders, and there are three different types of court orders that can be issued by a court in domestic violence situations: Protection Orders, Restraining Orders, and criminal No-Contact Orders. They are intended as legal measures to prevent further acts of violence, contact, threats or harassment. Statutes require law enforcement agencies to maintain a computerized record of these court orders.

Law enforcement officers must understand the mandatory arrest provisions for each type of court order. If officers determine that they are in a non-mandatory arrest situation, but there is a criminal violation of an order, officers should use their discretion in determining the most appropriate course of action. Officers should also be aware of other possible crimes that may have been committed.



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4.1.2 Sole Responsibility

“Petitioner” is the person that petitioned/asked for the order or the person that the order protects. The term “petitioner” may interchange with “complainant” or “plaintiff” or “victim.”

“Respondent” is the person that must “respond” to the order’s rules. The term “respondent” may be interchanged with “defendant” or “suspect.”

If a court order is violated with the “permission” of the victim, the terms of the order are still valid. It is not a defense that the petitioner allowed, invited, or encouraged the respondent to violate the order.

The **“Arrest Legend”** or **“Criminal Legend”** (seen below) is a legal warning that appears on the court order. These statements must be boldly printed on the orders.



RCW 26.50.035[1] [c] states that: “. . . You can be arrested even if the person or persons who obtained the order invite or allow you to violate the order’s prohibitions. The respondent has the sole responsibility to avoid or refrain from violating the order’s provisions. Only the court can change the order upon written application.”

RCW 10.99.040[4] [b] states that: “. . . 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.”



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4.1.3 Order for Protection/Protection Order

Overview

This kind of order is obtained by a family or household member who has been assaulted or fears abuse. Minors under the age of sixteen are eligible for order with parent or legal guardian.

- Law enforcement may be ordered to serve the protection order (RCW 26.50.090).
- Law enforcement is required upon receipt of order to enter it into WACIC (RCW 26.50.100).
- Law enforcement may be ordered to accompany the petitioner on a civil standby (RCW 26.50.080).
- Law enforcement is required to enforce any violations of the order (RCW 26.50.110).

Service of an Order for Protection

Orders for protection must be personally served on the respondent by law enforcement or process server, unless the court has ordered service by publication. The plaintiff (victim) cannot serve the respondent.

Officers should review the Law Enforcement Information Sheet for officer safety and physical description of the respondent.

When serving the order the officer shall give the respondent copies of all forms except:

- *The Law Enforcement Agency/Information Sheet* - this sheet usually contains the complainant's address and a contact person's number and address. This information is confidential.
- *The Return of Service form*

Law enforcement officers shall verbally read to the respondent the prohibited and required provisions, the court hearing date, and the criminal sanctions for violating the order.

Whenever possible, officers shall fill in the missing physical descriptors of the respondent on the Law Enforcement Information Sheet. The missing information may be obtained from the complainant, the suspect or third party at the time of service.

If the respondent claims no knowledge of the order, and the complainant has an extra copy, the officer should serve that extra copy on the respondent and complete a return of service form.



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If the respondent claims no knowledge of the order, and the complainant does not have an extra copy, the responding officer should serve the respondent with the complainant's copy of the order, complete a Return of Service form, and advise the complainant to obtain a replacement copy from the issuing court.

Protection Orders Served by Publication

There are special circumstances by which a respondent of a civil Protection Order may be served notice by publication, instead of personal service. Service by publication can only occur by order of the court.

When an officer investigates an alleged violation of a civil Protection Order that was served by publication, the officer shall attempt to determine whether the respondent knows of the existence of the Protection Order.

If the officer determines that the respondent is not aware of the Protection Order and its terms, the officer shall make reasonable efforts to obtain a copy of the Protection Order and serve it on the respondent during the investigation.

Violation of a Protection Order

Violations of Protection Orders are charged as a Gross Misdemeanor or Class C Felony under RCW 26.50.110.

Officers should apply the mandatory arrest rules described in the previous chapter.

Assault or Reckless Endangerment that occurs while an Order for Protection is in effect is a Class C felony.

A violation of an existing Protection Order is a Class C felony if the offender has two previous convictions for violating such orders. The previous orders may be Washington State or comparable out of state or federal orders. The previous convictions may involve the same victim or other victims (RCW 26.50.110(5)).

A criminal legend is not required on the Order for Protection for law enforcement officers to make a mandatory arrest.

The court may order the respondent to turn over weapons to law enforcement or may order use of a vehicle and essential personal effects as a part of an Order for Protection. If the respondent refuses to comply, the officer must report noncompliance to the prosecutor. A review hearing should be scheduled for a contempt hearing.



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4.1.4 Restraining Order

Overview

This kind of order is usually obtained upon filing a petition for dissolution (divorce), legal separation, or child custody. Although officers are not required to serve Restraining Orders, some provisions require criminal enforcement.

Service of a Restraining Order

A Restraining Order is served on the respondent, or the respondent's attorney.

Violation of a Restraining Order

Violations of Restraining Orders are charged as a Gross Misdemeanor or Class C Felony under RCW 26.50.110.

Officers should apply the mandatory arrest rules described in the previous chapter.



A criminal legend is required on the order to make a mandatory arrest. The legend should read: "Violation of this order with actual notice of its terms is a criminal offense under Chapter 26.50 RCW and will subject a violator to arrest."

Discretionary Arrest: Officers may use their own discretion in determining the most appropriate course of action when they have determined they are in a non-mandatory arrest situation. However, officers should be aware of all possible crimes that may have been committed and may still opt to issue a citation for violation of the order's terms.



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4.1.5 No-Contact Order

Overview

This kind of order is issued by the court subsequent to a domestic violence arrest. It is served by the court at the time of a suspect's release from custody, during arraignment, during trial or upon sentencing. Since the defendant is always present, the existence of a No-Contact Order is proof that it was served.

Service of a No-Contact Order

A criminal No-Contact order is served on the defendant upon release from jail, at arraignment, and at sentencing.

Violation of a No-Contact Order

Violations of No-Contact Orders are charged as a Gross Misdemeanor or Class C Felony under RCW 26.50.110.

Officers should apply the mandatory arrest rules described in the previous chapter.

Any violation of an existing No-Contact or Protection Order by assault or reckless endangerment is a Class C felony.

A violation of an existing Protection Order is a Class C felony if the offender has two previous convictions for violating such orders. The previous orders may be Washington State or comparable out of state or federal orders. The previous convictions may involve the same victim or other victims (RCW 26.50.110(5)).



A criminal legend is required on the order to make a mandatory arrest. The legend should read: "Violation of this order is a criminal offense under Chapter 26.50 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."

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4.1.6 Competing Court Orders

No statute or court rule governs the problem of enforcing conflicting provisions of court orders. However, some general guidelines for departmental consideration include:

- Protection Order provisions take precedence over other non-DV types of court orders.
- Protection Orders issued by a superior court usually take priority over a conflicting district or municipal court Protection Order.

In order to adopt a consistent policy, departments should consult with the prosecutor, presiding judges of the superior, district, and municipal courts, and battered women's advocates.

4.1.7 Return of Service

Each time service of a court order is completed, law enforcement must submit a Return of Service form which must include: who was served, what documents were served, the court order name and number, the date of service, the address where service occurred, the officers' names, signatures, and serial numbers.

The Return of Service Form and Law Enforcement Information Sheet shall be returned to the Department's records unit as soon as possible. Shift supervisors should review and approve these prior to forwarding them to the appropriate court (municipal, district or superior).

If the sheriff or municipal peace officer cannot complete service upon respondent within ten days, the sheriff or municipal peace officer shall notify the petitioner RCW 26.50.090(4). The petitioner should provide any additional information which would lead to serving the respondent. Notification to the petitioner should be made in writing by the agency responsible for service.



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4.1.8 Custodial Issues and Court Orders

A temporary or full Order for Protection can direct officers to assist one party in retaining custody of children.

Officers may accompany the designated party and request the physical transfer of a child from whomever may have physical custody; however, the child shall not be forcibly removed by law enforcement solely on the authority of this order. A writ of habeas corpus and a warrant is needed before law enforcement can forcibly remove any child held in custody.

Remember though, a peace officer may take a child into emergency custody without a court order pursuant to state law if there is probable cause to believe that the child is abused or neglected, or that the child would be injured physically or sexually.

If the child is taken into police protective custody for an emergency in the midst of a custody battle, the child must be transferred to the custody of Child Protective Services.

The parents should be advised that the child will remain with Child Protective Services pending a court hearing.

4.1.9 Civil Standbys

The court may order the possession and use of essential personal effects and a vehicle as part of an order, and may issue a civil standby order directing police to assist a petitioner in safely taking possessions (RCW 26.50.060 and 26.50.080).

Essential Personal Effects: includes but is not limited to clothing, cribs, bedding, documents, medications, and personal hygiene items. These items must be listed on the Protection Order.

4.1.10 Surrender of Weapons

Courts may order the respondent to surrender weapons to law enforcement.



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4.1.11 Verification of Orders

When officers respond to violations of court orders, they need to verify the court order exists and has been served before any enforcement action is taken. No-Contact Orders, Protection Orders, and Restraining Orders are valid statewide.

Upon receiving radio notification of a "hit" for a court order, a law enforcement officer is at the level of Reasonable Suspicion. This information gives officers the ability to detain and investigate further. But Probable Cause to arrest does not exist until the order is confirmed/verified.

The court order's existence can be verified by:

- A proof of service attached to the petitioner's copy of the order, showing service on the respondent. No further verification is required.
- WACIC Computer Check – Requesting the information by a Washington Crime Information Center (WACIC) computer check, or accessing the Data Control Unit (available in some agencies) or Dispatch using the respondent/defendant identifiers in the same manner as an outstanding warrant check.



Exception: RCW 26.50.115(3) states: "[Presentation of an unexpired, certified copy of a Protection Order with proof of service is sufficient for a law enforcement officer to enforce the order regardless of the presence of the order in the law enforcement computer-based criminal intelligence information system.](#)"

- If the responding officer's agency is not on-line with WACIC, the officer should contact another agency with a WACIC link such as a neighboring agency, a county sheriff's office or state patrol office, in order to access order verification information.
- Contacting the law enforcement agency in the jurisdiction where the order was issued.
- Contacting the Court Clerk's office or civil data unit.
- Determining that the suspect has knowledge of the order.
- The suspect or attorney's signature is on the order.
- Suspect admits existence of order.

The court order's service can be verified by:

- Suspect or suspect's attorney signature is on petitioner's copy of order.
- Respondent's copy of a certified proof of service.
- WACIC computer check.
- Dispatch (enhanced 911).
- Court clerk where order was issued.

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- Check with law enforcement agency of jurisdiction where order was issued.
- Civil data unit.
- Suspect admits knowledge of order.

If an officer is able to verify existence of a current order but not service, and a copy of the order is available (from any source), the officer shall serve the order if the respondent is present and make reasonable efforts to serve the order if the respondent is not present (RCW 26.50.115(2)).

If the order has been served, but neither the complainant nor the suspect have a copy reflecting the terms of the order, whenever possible, have dispatch or a data control operator read the criminal legend on the order and the restraint and/or exclusionary terms.

Free copies of the order are available to victims from the issuing court.

If the order is not verifiable:

- The order shall not be enforced and the complainant should be advised to contact the court that issued the order or the attorney who drafted the order.
- Law enforcement officers shall arrest the suspect if probable cause exists that a separate crime has been committed.



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4.1.12 Full Faith and Credit

In 1999, Washington enacted “full faith and credit” for foreign protection orders. It amended the RCW, adding a new chapter to Title 26 RCW (26.52), and prescribed penalties.

This act authorized law enforcement to enforce out of state or tribal criminal and civil protective orders in Washington State. A responding officer must enforce terms and conditions of the order as written. An officer must enforce the order if it appears to be valid and there is probable cause to believe a violation occurred.

What are the Benefits of Enforcing Foreign Protection Orders?

- Enhances police and prosecutors’ ability to protect and serve by granting them the authority to enforce foreign protection orders.
- Spares victims the effort of obtaining similar orders from Washington State.
- Shows respect to other states and tribal nations by enforcing their orders.
- Increases the ability of Washington courts to protect citizens who move or travel to those jurisdictions that have enacted full faith and credit.

“Foreign Protection Order” means an injunction or other order related to domestic or family violence, harassment, sexual abuse or stalking, for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to another person issued by a court of another state, territory, or possession of the United States, the Commonwealth or Puerto Rico, or the District of Columbia or any United States military tribunal, or a tribal court, in a civil or criminal action.

“Person entitled to protection” means a person, regardless of whether the person was the moving party in the foreign jurisdiction, who is benefited by the foreign protection order.

“Person under restraint” means a person, regardless of whether the person was the responding party in the foreign jurisdiction, whose ability to contact or communicate with another person, or to be physically close to another person, is restricted by the foreign protection order.



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4.1.13

Comparison of Court Orders

KIND OF ORDER	PROTECTION ORDER	NO-CONTACT ORDER	RESTRAINING ORDER	ANTI-HARASSMENT ORDER
<u>Nature of Proceeding</u>	Civil, under RCW 26.50.	Criminal, in context of pending criminal action.	Civil, normally in context of pending dissolution or other family law action.	Civil, under RCW 10.14.
<u>Who may obtain order?</u>	A person who fears violence from a "family or household member (10.99.020)", or who has been the victim of physical harm or fears imminent physical harm, or stalking from a "family or household member", (includes dating relationships). Minors under age of 16 with parent or guardian.	Incident must have been reported to the police. Criminal charges must be pending. Judge must consider issuance pending release of defendant from jail, at time of arraignment, and at sentencing.	Petitioner who is married to respondent or has child in common.	Petitioner who has been seriously alarmed, annoyed or harassed by a conduct which serves no legitimate or lawful purpose. Parties generally are not married, have not lived together, and have no children in common.
<u>Jurisdiction</u>	Telephonic hearings available in limited circumstances. EPO -- District, Municipal, or Superior Court. PO--limited to Superior Court if Superior Court has family law action pending, or if case involves children or order to vacate home.	District, Municipal, or Superior Court.	Superior Court only.	District Court. Limited provisions for referring cases to Superior Court. Municipal, District, or Superior for enforcement.
<u>Cost to Petitioner</u>	No filing or service fees.	None.	Same as dissolution. Filing fee waived if indigent.	Reduced filing fee waived if indigent. Service fee waived if indigent. Court provides forms.
<u>How does the respondent receive notice?</u>	Notice served on the respondent. Notice by certified mail, or publication authorized in limited circumstances.	Verbal and written notice given at bail hearing, arraignment, or sentencing.	Notice served on respondent's attorney.	Notice served on respondent.



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KIND OF ORDER	PROTECTION ORDER	NO-CONTACT ORDER	RESTRAINING ORDER	ANTI-HARASSMENT ORDER
Consequences if order is knowingly violated.	Mandatory arrest for violating restraint and exclusion provisions. Possible criminal charges or contempt. Class C felony if assault or reckless endangerment, otherwise Gross Misdemeanor.	Mandatory arrest. Release pending trial may be revoked. Additional criminal or contempt charges may be filed. Class C felony if assault or reckless endangerment, otherwise Gross Misdemeanor.	Mandatory arrest. Possible criminal charges or contempt.	Gross Misdemeanor. Possible criminal charges or contempt.
Maximum duration of order.	EPO--14 days with personal service. EPO--24 days certified mail or with service by publication. PO--Designated by court, one year, or permanent.	Until trial and sentencing are concluded. Post-sentencing provision lasts for possible maximum of sentence in Superior Court or two years in District or Municipal court.	RO--14 days. Preliminary injunction--pendency of action. TRO in final decree-permanent unless modified.	EAOH--14 days. PAHO--1 year or permanent..

- EPO = Emergency Protection Order & (Temporary Order for Protection)
- PO = Order for Protection
- TRO = Temporary Restraining Order
- RO = Restraining Order
- EAOH = Emergency Anti-Harassment Order
- PAHO = Permanent Anti-Harassment Order

Adapted from the *Domestic Violence Manual For Judges, Volume I - Criminal, 1992*. The Criminal Domestic Violence Manual Subcommittee, prepared by the Office of the Administrator for the Courts for the State of Washington, Olympia, WA, updated 1998.

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4.1.14

FOREIGN PROTECTION ORDER

Basic Elements of Enforcement	<p>Authorizes law enforcement to enforce out of state or tribal criminal and civil protective orders in Washington State. A responding officer must enforce the terms and conditions of the order as written. Officers are not required to know the laws of the issuing jurisdiction in order to enforce a foreign order.</p> <p>An officer must enforce the order:</p> <ul style="list-style-type: none"> • if it appears to be valid • there is probable cause to believe that a violation occurred
Is Law Enforcement REQUIRED to establish the validity of the order?	No. There is a presumption that the order is valid.
Ways to verify orders	<ul style="list-style-type: none"> • Check for registration of the order in WACIC or NCIC Protection Order File (The victim is NOT required to register orders in Washington) • If the victim shows you a copy of the order, look for state or court certification (The victim is NOT required to have a copy of the order) • Confirm the elements by communicating with the issuing court • If the officer is using the victim's only copy of order, do NOT take the victim's copy. Make a copy and return the original to victim. • Draw upon personal knowledge of the officer or facts developed in the investigation (i.e., the suspect admits existence of the order)
Immunity for wrongful arrest?	Yes, provided that the officer was acting in good faith and without malice.
Questions for the victim and document in report.	<ul style="list-style-type: none"> • What city/tribe is the issuing court located in? • What other locations have crimes been reported involving this abuser? Has the person under restraint ever been prosecuted for violating this order? If yes, where? • Has the person under restraint received notice of this order or was this person in court when it was issued?



Chapter 5: Response and Investigation



5.1 Response and Investigation

5.1.1 Five Things to Say to a DV Victim

- "You do not deserve to be abused."
- "It will only get worse."
- "I am afraid for your safety."
- "I am afraid for your children's safety."
- "I am here to support you/help you."

5.1.2 Working to Overcome Victim Reluctance

1. Mobilize and encourage victims:

- Remind victims that a crime has occurred and that they have the right to be free from physical assaults and abuse.
- Let victims know that there are programs that help people in their situations, and that they can talk with advocates about their options including safe shelter (law enforcement officers must know their local resources).
- Emphasize that they alone cannot solve a violent partner's problems.
- Inform the victim that domestic violence usually reoccurs and gets worse unless there is some form of intervention.

2. Explain criminal justice options:

- Explain to the victim that there are options in terms of the criminal justice system, including court orders (No-Contact and Protection Orders), court-ordered counseling, and probation.



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5.1.3 Overview of Officers' Duties at DV Calls

1. Secure the Scene

The officer should obtain all available information and prior history from the dispatcher before arriving at the scene and should notify the dispatcher upon arrival.

The responding officer(s) should approach the scene of a domestic dispute as one of high risk. Whenever possible, a minimum of two officers should respond to a domestic call.



The first step of a DV call is the same as every police call: **secure the scene.**

Officers should separate the people involved, and do a protective sweep of the area to find out who is present, identifying all occupants/witnesses on the premises or at the scene, including children.

Officers should frisk and handcuff subjects if legal and necessary, identify potential weapons in the surrounding area, calm the subjects down, and tend to injuries.

Officers may opt to remove the suspect to the patrol car if immediate arrest is warranted, or for safety reasons.

2. Investigate

In handling domestic violence incidents, the officers' general approach should reflect the seriousness of the offense and its consequences for both the suspect and the victim. To convey this seriousness, officers should inform the parties involved that domestic violence is a crime and investigate the incident as thoroughly as any other crime.

Officers should use the same information gathering and interviewing strategies used in any other criminal investigation while framing their questions with consideration for the victim's present emotional state and ongoing safety.

Inquire about the nature of the dispute. Determine who's involved, if the parties share that family/household relationship, what happened, who's the primary aggressor, if it is a mandatory arrest situation.

The officer should be persistent about seeing and speaking alone with the subject of the call. Whenever possible, remove the victim from the hearing range and eye contact with the suspect.



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If the person who called the police is someone other than the subject of the call, the officer should not reveal the caller's name.

Match the environment with the events: signs of struggle, furniture overturned, torn clothing.

Assess and document whether drugs and alcohol were consumed and by whom.

Look for corroborative evidence: unusual items in inappropriate places in the house (kitchen utensils found in the bedroom).

Note any continuing threats to the victim in the presence of the police.

Look for existence of any injuries on the alleged perpetrator consistent or inconsistent with the perpetrator's claim of self defense.

Inquire about history of domestic violence incidents (reported and unreported).

Remember not to use children as interpreters! Doing so puts the children in the terrible position of choosing sides against one parent or the other. Children's reliability as translators in court is shaky at best. It is a much better practice to use your department's established protocols for using a translator.

3. Enforce the Law

When in doubt, officers should act to secure the victim's safety, in *good faith*.

Remember, that even after the four-hour mandatory arrest expires, the statute of limitations still allows for a physical arrest at the officer's discretion.

If there's no Probable Cause, then officers should do their best problem solving.

4. Provide Resources

RCW requires that officers provide resource info to the victim. This is normally accomplished by giving the victim the DV Pamphlet/victim rights form printed by the law enforcement agency.

Officers must make sure the victim knows how to get more help: shelters, family and friends, and the ability to call 911. The officer's serial number and the incident report number should be given to the victim. The "Victim Rights Statement" should be available in multiple languages.



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Whether or not an arrest is made, the responding officers should not leave the scene of the incident until the situation is under control and the likelihood of further violence has been significantly diminished.

5. Document the Situation

RCW requires a report for domestic violence situations, even if no arrest is made. Officers shall take a complete police report – even on “verbal domestics” unless department policy dictates otherwise. The investigation and documentation should be complete: written statements, pictures, evidence, etc. Even if the suspect is not located, the officers must still document their efforts to find the individual.



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5.1.4 Entry into the Home/Area

Law enforcement officers may enter and conduct a search of the premises if consent has been given to do so. Consent to search can be given only by a person with authority to do so (State v. Birdsong, 66 Wn.App. 584 (1992); State v. Mathe, 102 Wn.2d 537 (1984)).

Police with a warrant may enter after “knock and announce” pursuant to RCW 10.31.040 (State v. Garcia-Hernandez, 67 Wn.App. 492 (1992)).

A warrantless search is valid when, considering the circumstances which faced the officer at the time, the state demonstrates that the officer subjectively believed that an emergency existed, that this belief was reasonable, and that the need to search the particular site was reasonably associated with the emergency (State vs. Lynd, 54 Wn.App. 18 (1989)).

If consent to enter is not given, officers should assess whether Exigent Circumstances exist for forced entry. Factors for consideration by officers in determining exigent circumstances include:

- A grave offense, particularly involving violence
- Suspect is armed, or “reasonable, trustworthy” information that the suspect is armed
- Strong reason to believe that the suspect is on the premises
- The suspect is likely to escape if not swiftly apprehended
- Hot pursuit
- Fleeing suspect
- Danger to arresting officer
- Mobility of the vehicle
- Mobility or destruction of evidence (See also, State vs. Terrovona, 105 Wn.2d 632 (1986))

These factors must be documented in the case report.

If entry is refused and exigent circumstances cannot be supported, officers should drive by and observe the scene as frequently as possible. Officers should state in their case report why forced entry was not an option, and what action was taken instead.



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5.1.5 Considering Prior History

Detailed knowledge of the current and past incidents will increase the officers' ability to make appropriate decisions about arrest options and give advice to victims on follow-up procedures. This information can be acquired through carefully interviewing the victim and the suspect, and should be fully documented in the offense report.

Officers will often be walking into a situation in which the relationship between the suspect and the victim has been characterized by a history of domestic violence. In order to respond effectively to the present incident, you will need to know about past incidents and, therefore, you should also interview for historical information.

By inquiring about past domestic violence incidents, the officers gain information that aids in evaluating:

- The dangers of the situation
- Probable cause
- Identity of the primary aggressor
- Possible crimes to be charged
- Safety of the children
- Emergency housing and medical needs of the victim and children



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5.1.6 Gathering and Preserving Evidence

Officers should collect and preserve all physical evidence reasonably necessary to support the crimes being charged. Officers should preserve evidence that the prosecutor may be able to use at the trial. Examples of such evidence include bloody clothing, weapons, photographs of the scene, and photographs of the victim.

Photograph the crime scene and victim, if possible, and note the condition of the crime scene, including a description of the physical surroundings and damaged property associated with the offense/violence. The officer should ensure that photographs are taken of visible injuries on the victim, or make a follow-up visit to photograph injuries that may become visible at a later time. Photographs of crying or upset children are powerful visual aids that help the court understand the situation.

All injuries, whether observable or not, should be documented in the offense report. The emotional demeanor of the victim and suspect should also be noted. The ability to show the victim as crying, with bruises, reddened eyes, or other visual evidence of distress will substantiate the case that may not come to trial for several months.

Officers should collect all physical evidence which substantiates the victim's injuries and the crime charged (i.e. weapons, torn clothing, broken items).

Officers should capture/record the voicemails left on the victim's answering machine or answering service. Victims should not be relied upon to preserve the evidence for trial.

Whenever possible, preserve the 911 tape that records the incoming call, and description of the incident, particularly where the victim is the calling party.

Each agency should have a written policy for confiscating firearms used in or located at the scene of the incident.

Officers should prevent communications between suspect, victim and witnesses.



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5.1.7 Medical Assistance and Treatment

The officers should encourage the victim to seek an emergency room examination when appropriate. If the victim declines emergency treatment, officers should document the refusal in the report, and suggest a visit to the victim's personal physician as follow-up.

Whenever possible, officers should photograph the victim whether injuries are visible or not, and ask the victim to contact police to take photographs if injuries appear later. If possible, follow-up photos should be taken within a few days of the incident to document progression of the injury for court.

Officers should obtain a signed medical release form from the victim and attach it to the offense report. Whenever necessary, officers should transport the victim, the children or the suspect to a hospital for medical treatment. Officers should obtain the names, addresses, and phone numbers of ambulance, paramedic personnel, and/or physician treating the victim.



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5.1.8 Processing the Suspect

When the suspect has been arrested and taken into custody the following procedures should be followed at the jail:

- Upon booking, law enforcement officers should attach their complete offense report which includes:
 - Victim/witness statements and statement from suspect when available.
 - When appropriate, a medical release form signed by the victim.
 - Evidence log (i.e. photographs, torn or bloodstained clothing, broken items).
- A brief summary of the incident on the back of a citation is insufficient information to present for a judicial review for a proper arrest, or prosecutorial filing determination. The citation should include sufficient probable cause factors.
- When booking for misdemeanor or felony charges and/or violation of a court order, law enforcement officers shall identify all documents as "DV". When citing a felony, indicate the charge on the offense report with the felony crime for the probable cause arrest (i.e. Assault – 2 DV). All applicable crimes and statutory citation should be included within the offense report and related booking documents.
- Whenever possible, jail services or a person designated by the Sheriff or Chief of Police, should immediately notify the victim when the suspect is released from jail and any conditions of bail imposed. Additionally, the victim should be informed that they have the right to ask for revocation of bail if the suspect violates any of the conditions.

5.1.9 Medical/Shelter Transport

Officers may offer, arrange, or facilitate transportation for the victim and children to a hospital for treatment of injuries or to a place of safety or shelter. When officers are transporting the victim and children to a shelter program, they should not arrive unannounced, whether or not it is at a confidential location.

Departments should work with the local shelter program for battered women to develop a protocol for transporting victims and children.



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5.1.10 Civil Standbys

A civil standby is an officer's presence to assure peace. Where there is a law enforcement request to "standby" while one party retrieves property or belongings from a shared residence pursuant to a court order, officers should determine the possibility of violence at the standby location and proceed accordingly.

If the person requesting assistance calls from somewhere other than the actual standby location, the caller should be instructed to call back from the safest place close to the actual location, and officers will be dispatched to accompany the caller.

Law enforcement officers should not assist or participate in the division of personal property. Law enforcement officers should remain neutral and be solely concerned with maintaining the peace and safety of those present.

In a non-arrest situation, if one party volunteers to leave, law enforcement officers shall stand by while the person gathers a few necessary personal items.

During the civil standby, officers should prevent either person from approaching or interfering with the other during the gathering of personal items.



5.2 Investigative Questions and Techniques

5.2.1 Interviewing - General

The following guidelines should be incorporated into every interview conducted:

- Whenever possible, move the suspect out of hearing range and visual distance of the victim.
- Officers should closely question statements indicating that the injuries were caused by an accident.
- The motives of either party should not be the focus of the interview. Trying to determine the motives may encourage officer bias and hinder the victim's ability to focus on what happened as opposed to why it happened. The officer's role is to determine probable cause, not to resolve the incident through mediation.
- Officers should request appropriate interpreters at the scene when language or communication barriers exist. Remember that children should not be used as interpreters.
- Listen for and document statements which are exceptions to the hearsay rule (Evidence Rule 803(a) (1)-(3)).
 - Present sense impression - A statement describing or explaining an event while the declarant was perceiving the event, or immediately thereafter.
 - Excited utterance - A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
 - Then existing mental, emotional, or physical condition - A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact unless it relates to the execution, revocation, identification, or terms of the declarant's will.



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5.2.2 Interviewing the Victim

- When a victim wants to talk about past events, don't cut them off. This may be the first chance for the victim to "unload." Important background information may be revealed.
- Attempt to secure a written statement from the victim, or document why not obtained.
- Find out if the victim called someone else BEFORE calling 911. Get that person's information.
- If children are at the scene, attempt to interview the victim without the children in view.
- Determine if threats have been made to the victim by the suspect and the nature of those threats.
- Is the victim under medical care for a physical or mental condition and/or taking any medication?
- Is the victim under the influence of alcohol or drugs? If so, how recently?
- The victim shall not be advised that they can "press" charges or "drop" charges. That is the sole decision of the prosecutor. Officers should remind the victim that Washington law prohibits acts of domestic violence, and the law is strictly enforced.
- The officer should make no statements which would tend to discourage a victim from reporting an act of domestic violence.
- Law enforcement officers should obtain information concerning present safety, prior history of abuse, availability of weapons and threats of retaliation that may affect bail or personal recognizance release. Including this information in the case report narrative for review by the court representatives or judge.
- The officers should carefully inquire about injuries of the victim that may be concealed by clothing or otherwise not readily observable.
- Determine the existence of a No-Contact Order, Protection Order, or Restraining Order.
- If the suspect has fled the scene, attempt to solicit the possible whereabouts of the accused.



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Questions to Ask:

- "Has this ever happened before? If yes, was it reported (or not reported) to law enforcement?"
- "Has the suspect ever been arrested for hurting you before?"
- "Have you felt afraid before? If yes, what happened to make you feel afraid?"
- "Have you ever called the police or anyone else for assistance? If yes, what happened? Did you suffer any retaliation from the abuser for seeking help?"
- "Has anyone seen any of your past injuries (i.e. bruises, swelling)? What are their names addresses, phone numbers?"
- "Is there a number where we can contact you at a later date or person and phone number where we can contact you?"
- "What was the worst incident to you? What were the worst threats made against you or your children?"
- "Has a weapon or object ever been used against you or your children?"
- "Have you ever been treated by a doctor or hospitalized for injuries inflicted by the offender?"
- "Has violence during pregnancy led to miscarriages or a lost pregnancy?"
- "Are you getting enough sleep?" (may not be criminal, but helps show a pattern by the suspect)



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5.2.3 Interviewing the Suspect - Determine if pre- or post-Miranda

- Is the suspect under medical care for a physical or mental condition and/or taking any medication?
- Does the suspect use drugs or alcohol? If so, how recently?
- Record any spontaneous statements and the suspect's description of the incident.
- Record any alibi statements made by the suspect.
- Document any statements used by the suspect to discredit the victim.
- Document changes in the suspect's demeanor during the investigation process (i.e. calm and controlled vs. escalation in aggression).
- If the suspect is arrested, document spontaneous statements while in police custody.
- Record any statements made by the suspect concerning whether the suspect feared alleged victim or sustained any pain or injuries caused by alleged victim (i.e. this is especially helpful to the prosecutor to refute defendant claims of self-defense).



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5.2.4 Interviewing Witnesses

- Interview all witnesses to the incident, including the 911 caller.
- Document prior instances of violence that may have been witnessed in order to establish a pattern of abuse.
- Document the witness's observation of the victim's physical and emotional condition (i.e. torn clothing, injuries, crying, fear, anxiety).
- Record name, address, and phone number of any interpreters used.
- Document statements made to witnesses by alleged suspect or victim concerning the incident.



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5.2.5 Interviewing Children

- Don't believe the adults when they say that the children were sleeping or in another room.
- Be warm but very matter of fact. Do not ask how the child feels, and you will get better results.
- When interviewing children, try to first establish some connection by inquiring about the child's interests.
- Interview children in a manner appropriate to the child's age and question outside of the view and hearing of the victim and suspect.
- Document any signs of physical trauma and apparent healing of abusive wounds on the child and refer to Child Protective Services (RCW 26.44.030).
- Whenever possible, officers do not handcuff the suspect in front of the children.

Understand the Child's Needs

- Reassure the child it is not their fault. The child should be given specific assurances that they are not to blame, particularly if the child called law enforcement.
- Reassure the child they will not be left alone.
- Do not speak about the suspect or the victim in a degrading manner.
- Show no emotion about what children say.
- Reassure children that they are doing a good job of talking to you and that you like talking with them.
- When asking a question, acknowledge the child's answer.

How to Calm the Child Down

- Kneel down to their eye level.
- Talk to the child in their environment where they feel safe.

Establishing a Rapport with the Child

- Tell the child who you are and why you are talking to them.
- Allow the child to relax by giving them one of their toys.
- Always praise and reassure the child.
- Try not to react too strongly when a child is telling what happened.
- Let the child ask questions if they want to.



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Begin your conversation with:

- "My job is to keep you safe."
- "I need to understand what happened here today to keep you and your family safe."

Keep the questions simple. Initially ask questions that they will know the answer to, for example:

- "What is your name?"
- "Are you okay?"
- "Do you have any brothers or sisters?"
- "When is your birthday?"
- "What is your favorite television show?"
- "What is your favorite toy?"

If the child does not give you an appropriate answer, try rephrasing the question. They may not have understood you the first time. After building a rapport with the child, begin your interview by asking open-ended questions such as:

- "Did something happen here tonight?"
- "Why are/were you hiding in the closet?"



Chapter 6: Reports and Documentation



6.1 Reports and Documentation

6.1.1 Introduction

RCW 10.99.030 mandates that a complete offense report shall be taken at all domestic violence calls, whether or not an arrest is made. The offense report should include the disposition of the incident.

The report should be sent to the prosecutor within ten days of completion if there is probable cause to believe that an offense was committed, unless the case is under active investigation.

If officers are unable to make a physical arrest and a citation is issued, the probable cause factors must be clearly stated in the offense report. The officer must take a victim statement every time a citation is issued. If the victim refuses to give a statement, the officer shall clearly state the reason why in the case report.

A large number of domestic violence cases end up being evidence-based (no victim cooperation) – some estimates are as high as 75%. Officers should plan on making their case without the victim's help in court. Proper documentation is essential in presenting a strong case that can succeed in court without victim cooperation.

Keep in mind that victim recanting is a safety mechanism. Officers should not get upset about it. They should understand that the victim is doing what he/she feels is safest.



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6.1.2 Offense Report

A complete offense report (the main report, also called a "case report" or "incident report") should include the following information:

- The date, time and location of the incident.
- Names, addresses, dates of birth and phone numbers of the victim, suspect, witnesses, children, and the 911 caller.
- Description of the physical environment. The report should describe any evidence of an altercation, i.e., broken items, furniture tipped over.
- A statement of the relationship between the victim and the suspect.
- The factors used to determine the primary aggressor.
- Use of weapons.
- Use of alcohol or drugs by either party.
- The physical description and the size of each party.
- Elements used to establish probable cause.
- Description of injuries (victim, suspect, witnesses) including those observable and non-observable. Describe observable injuries in detail (i.e. a two inch cut over the right eye, etc.) Ask the victim whether she/he sustained other injuries that may not be visible and document them in writing, i.e., pain, soreness.
- Whether the victim is pregnant.
- A signed medical release, when appropriate.
- Where both parties are arrested, a probable cause statement for each arrest. If an officer makes a multiple or dual arrest, the report should separately document how probable cause was established for each individual arrested.
- List all possible crimes committed.
- Specific details describing the emotional state of the victim and suspect.
- Prior history of abuse (reported or unreported to law enforcement) in Washington State and other locations. History of abuse or violence is used by the prosecutor in determining the best course of legal action. Documented past abuse can be used as evidence. This information is also helpful to other agencies in determining an appropriate level of intervention.
- A complete evidence log for all items seized.
- If an officer was injured in the incident, the nature and circumstances of the injury.
- An additional contact telephone number and location for the victim, such as a close family member or friend. This information shall be listed on a separate sheet and marked "CONFIDENTIAL – DO NOT DISCLOSE."



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6.1.3 Documenting Violations of Court Orders

Include ALL the info about the court order:

- Type of order
- Court order number
- Issuing court
- Issue date
- Expiration date
- Date of service
- Exact language from the order that describes the prohibited act
- Describe exactly how the order was violated
- Quote the "Arrest Legend"

6.1.4 Felony Charges

Examples of domestic violence incidents that should always be presented for felony prosecution include:

- Gunshot wound
- Discharge of a gun in an attempt to wound
- Intentional pointing of a gun at a victim
- Knife wound
- Serious threat with knife or other deadly weapon such as lunging with a knife or holding the knife to the throat
- Any injury that constitutes grievous bodily harm, including broken bones
- Any injury which requires admission to a hospital, other than routine first aid treatment
- Any injury which causes permanent damage such as loss of hearing or sight
- Intentionally inflicted burns
- Injury that causes internal bleeding



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6.1.5 Writing Descriptively

Officers should note the victim's emotional state, and be specific about the victim's emotional state (i.e. crying, shouting, fearful).

Don't write: "She was upset."

Do write: "She was crying and wiping her tears with her shirt sleeve. She had trouble making it through her sentences without holding her hands to her face and sobbing. She was shaking."

Officers should document the facts and let the reader draw the same conclusion that they did.

6.1.6 Other Report Forms

Booking Form – The Probable Cause statement must contain *all* the elements of each crime charged. Keeping the suspect in jail is dependent upon how complete the PC statement is. Officers should use extra Continuation Forms if they run out of room! Remember that the Statement of Probable Cause is all the judge will see at the suspect's first appearance in court.

Medical Release Form – Law enforcement officers should attempt to get a signed medical release from the victim as early as possible in the investigation – HIPPA regulations require even the medics to have a signed release before providing any information.

DV Supplemental Report Form – Department policy may require an additional report form for domestic violence calls. This extra information helps follow-up investigators and the prosecutor make a better case in court.

Written Statements – Officers should obtain a detailed statement from the victim, and use the victim's exact words whenever possible. Written statements from the witnesses and the suspect should also be taken whenever possible. The suspect's written statement is important, even if they are still blaming the victim or denying it.



6.1.7**WA STATE LAW ENFORCEMENT DOMESTIC VIOLENCE INVESTIGATION CHECKLIST****I. VICTIM:**

- DESCRIBED THE VICTIM'S LOCATION UPON ARRIVAL.
- ADMINISTERED FIRST AID TO THE VICTIM.
- RECORD ANY SPONTANEOUS STATEMENTS MADE BY THE VICTIM.
- DESCRIBED THE VICTIM'S EMOTIONAL CONDITION.
- DESCRIBED THE VICTIM'S PHYSICAL CONDITION.
- DOCUMENTED THE VICTIM'S INJURIES IN DETAIL.
- MADE NOTE OF THE VICTIM'S RELATIONSHIP TO THE SUSPECT.
- RECORDED HISTORY OF ABUSE.
- NOTED ANY COURT ORDERS (PROTECTION, NO CONTACT, RESTRAINING ORDER, FOREIGN PROTECTION ORDER).
- RECORDED VICTIM'S TEMPORARY ADDRESS AND CONTACT NAMES AND NUMBERS ON A CONFIDENTIAL SHEET ATTACHED SEPARATELY TO REPORT.
- GAVE VICTIM REQUIRED INFORMATION REGARDING RIGHTS, COURT RELATED VICTIM SERVICES, SHELTER, AND COMMUNITY RESOURCES.
- PROVIDED VICTIM WITH INCIDENT NUMBER, OFFICER NAME AND SERIAL NUMBER AND/OR PROSECUTOR NAME AND NUMBER.
- ADVISED VICTIM TO CALL 911 IMMEDIATELY SHOULD A CRIME/VIOLATION REOCCUR.

II. SUSPECT:

- DESCRIBED THE SUSPECT'S LOCATION UPON ARRIVAL.
- ADMINISTERED FIRST AID TO THE SUSPECT.
- RECORDED ANY SPONTANEOUS STATEMENTS MADE BY THE SUSPECT.
- DESCRIBED THE SUSPECT'S EMOTIONAL CONDITION.
- DESCRIBED THE SUSPECT'S PHYSICAL CONDITION.
- DOCUMENTED THE SUSPECT'S INJURIES IN DETAIL.
- DOCUMENTED EVIDENCE OF SUBSTANCE/CHEMICAL ABUSE BY SUSPECT.
- INTERVIEWED SUSPECT.

III. WITNESS:

- IDENTIFIED ALL WITNESSES, DATES OF BIRTH, AND INTERVIEWED SEPARATELY.
- LISTED NAMES AND DATES OF BIRTH OF CHILDREN PRESENT.
- INTERVIEWED THE CHILDREN, AND RECORDED STATEMENTS IN REPORT.
- RECORDED NAMES AND ADDRESSES OF EMERGENCY PERSONNEL.
- IDENTIFIED TREATING PHYSICIAN AND ADDRESS.
- IDENTIFIED TREATMENT FACILITY/HOSPITAL AND ADDRESS.
- MEDICAL RELEASE OF INFORMATION SIGNED BY INJURED PARTY.
- IDENTIFIED NAME OF 911 CALLER AND NATURE OF CALL.
- RECORDED THE "911"# _____ AND INCIDENT# _____.

IV. EVIDENCE:

- PHOTOGRAPHED THE CRIME SCENE.
- TOOK "FULL BODY" PHOTOGRAPH OF THE VICTIM.
- PHOTOGRAPHED THE VICTIM'S INJURIES.
- PHOTOGRAPHED THE SUSPECT'S INJURIES.
- IMPOUNDED ALL WEAPONS USED.
- IMPOUNDED WEAPONS FOR SAFEKEEPING.
- ATTACHED RELATED REPORTS: MEDICAL RELEASE, WITNESS AND CHILDREN STATEMENTS, PHOTOGRAPHS, IMPOUND/EVIDENCE TAG.

Chapter 7: Follow-Up Investigation



7.1 Follow-Up Investigation

7.1.1 Introduction

Officers should routinely make a follow-up visit with the victim. Investigation will be enhanced during the second contact. Injuries may now be visible and the victim, now removed from the immediate crisis, may be able to recall information that will aid in the investigation. The officers shall not consider the desire of the victim to “drop” charges in assessing whether the case should be submitted to the prosecutor for filing.

However, if the victim is living in a confidential location such as a battered women’s shelter, officers should work with the program to get the information needed, fully complying with confidentiality requirements of the program. A protocol should be developed between the local domestic violence program(s) and the law enforcement agency to facilitate easy follow-up investigation on criminal domestic violence incidents.

In addition, the follow-up visit can be used to emphasize referral information to the local domestic violence program or to other community resources. The officer can evaluate the safety concerns of the victim and reinforce the importance of contacting law enforcement if the suspect returns or violates provisions of release or existing court orders.

7.1.2 Submitting Follow-Up Work to the Prosecutor

A complete follow-up investigation for submission to the prosecutor should include:

- Medical records for any hospital treated injuries related to the specific incident
- The 911 tape
- Follow-up interviews of the victim and witnesses, if necessary
- Photographs of the victim’s injuries to the victim, even if photographs were taken at the time of the original incident
- The name, address, and phone number of two close friends or relatives of the victim who will know her whereabouts
- Criminal records check (state and national) of the suspect



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7.1.3 *Understanding the Roles of Domestic Violence Advocates*

<i>Variables to Consider</i>	Criminal Justice-Based Advocate	Community-Based Advocate
<i>Employer</i>	City or County	Community based domestic violence victims' services program, shelter, non-profit or association.
<i>Victim Contact</i>	Yes, except -- contact is prohibited, if previously known victim is now a defendant.	Yes, even if the victim is arrested or named as a respondent in a civil court action.
<i>Batterer Contact</i>	Varies	No
<i>Confidentiality Issues</i>	Information & records available to prosecutor, defense attorneys & law enforcement; Has access to records in criminal justice system.	Client records, agency location, & communication with victim are confidential; Unless a release of information from victim; Or a valid court order is issued.
<i>Working Guidelines & Safety Planning</i>	Works with prosecution to guide case through criminal justice system; Coordinate case information with prosecutor & law enforcement; Educate the victim about the consequences of participation or non-participation in the criminal justice system and safety planning.	Advocate for and empower battered women; Facilitate safety planning; Educate those in the civil & criminal justice system about the victim's safety concerns; Educate the victim about the possible implications of participating in the civil & criminal justice system, and guiding them through these processes.
<i>Referrals to Services</i>	Offer referrals for victim to contact; May refer to local shelter and community based advocacy program.	Advocate for battered women to receive services from other agencies.

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