

16– Harassment & Court Orders

Harassment

– RCW 9A.46.020 (Gross Misd. / Class C Felony)

1. Without lawful authority, the person *knowingly* threatens:
 - a. To cause bodily injury immediately or in the future to the person threatened or any other person;

-OR-
 - b. To cause physical damage to another's property;

-OR-
 - c. To subject the person threatened or any other person to physical confinement or restraint;

-OR-
 - d. To maliciously do any other act which is intended to substantially harm the person threatened or another with respect to his/her physical or mental health or safety;

-AND-

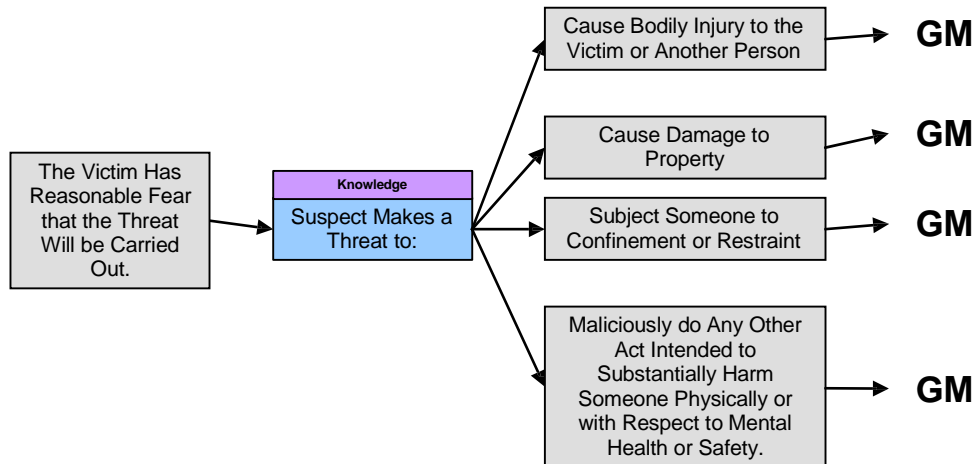
2. By words or conduct places the person threatened in *reasonable fear* the threat will be carried out, including threats communicated through electronic communication.

Misdemeanor Presence Exception?
YES

Threatens to:

- Assault
- Mal. Misc.
- Unlawful Imprisonment
- Anything Else Bad

Notice how the things listed here are already crimes IF YOU DID THEM. Now it's also illegal to threaten to do them.



DISCUSSION:
Explain the difference between Harassment and Assault – the difference between reasonable fear and reasonable + imminent fear.

Class C Felony if:

- The suspect has previously been convicted in this or any other state of any crime of harassment (as defined in RCW 9A.46.060) AND
 - The victim is the same person, or
 - Member of the victims family or household (as defined in DV laws), or
 - Any person specifically named in a No-Contact or No-Harassment Order;

-OR-
- Suspect harasses another person by threatening to kill the person threatened or any other person (or an act that is equivalent to killing).

-OR-
- Suspect harasses a criminal justice employee in the course of, or in retaliation for, doing official duties. Threatening words are not enough if it is apparent that the suspect does not have the present and future ability to carry out the threat.

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Place Where Committed

– RCW 9A.46.030

1. Any Harassment offense may be deemed to have been committed where the conduct occurred or at the place from which the threat or threats were made or at the place where the threats were received.

“Previous Convictions of Harassment”

– RCW 9A.46.060

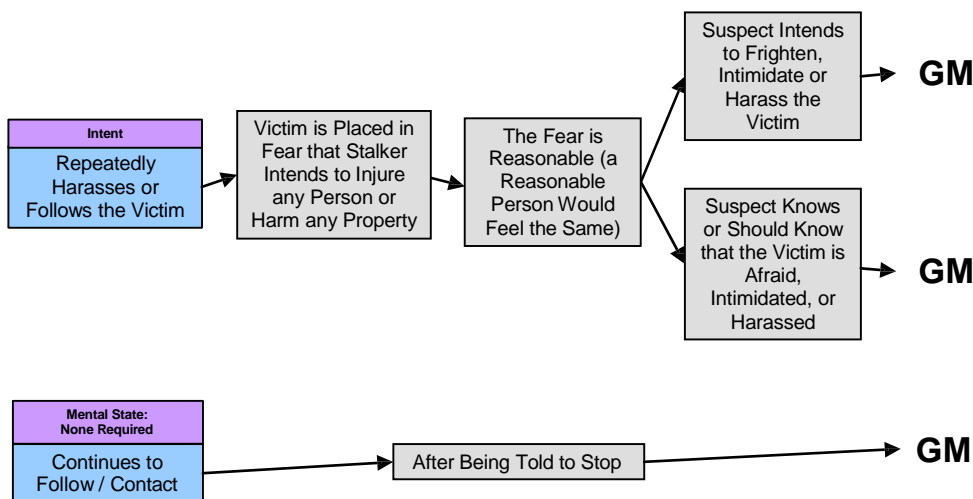
1. As used in this chapter, "previous convictions of harassment" may include but is not limited to any of the following crimes:
 - Harassment (RCW 9A.46.020)
 - Malicious Harassment (RCW 9A.36.080)
 - Telephone Harassment (RCW 9.61.230)
 - Assault in the First Degree (RCW 9A.36.011)
 - Assault of a Child in the First Degree (RCW 9A.36.120)
 - Assault in the Second Degree (RCW 9A.36.021)
 - Assault of a Child in the Second Degree (RCW 9A.36.130)
 - Assault in the Fourth Degree (RCW 9A.36.041)
 - Reckless Endangerment (RCW 9A.36.050)
 - Extortion in the First Degree (RCW 9A.56.120)
 - Extortion in the Second Degree (RCW 9A.56.130)
 - Coercion (RCW 9A.36.070)
 - Burglary in the First Degree (RCW 9A.52.020)
 - Burglary in the Second Degree (RCW 9A.52.030)
 - Criminal Trespass in the First Degree (RCW 9A.52.070)
 - Criminal Trespass in the Second Degree (RCW 9A.52.080)
 - Malicious Mischief in the First Degree (RCW 9A.48.070)
 - Malicious Mischief in the Second Degree (RCW 9A.48.080)
 - Malicious Mischief in the Third Degree (RCW 9A.48.090)
 - Kidnapping in the First Degree (RCW 9A.40.020)
 - Kidnapping in the Second Degree (RCW 9A.40.030)
 - Unlawful Imprisonment (RCW 9A.40.040)
 - Rape in the First Degree (RCW 9A.44.040)
 - Rape in the Second Degree (RCW 9A.44.050)
 - Rape in the Third Degree (RCW 9A.44.060)
 - Indecent Liberties (RCW 9A.44.100)
 - Rape of a Child in the First Degree (RCW 9A.44.073)
 - Rape of a Child in the Second Degree (RCW 9A.44.076)
 - Rape of a Child in the Third Degree (RCW 9A.44.079)
 - Child Molestation in the First Degree (RCW 9A.44.083)
 - Child Molestation in the Second Degree (RCW 9A.44.086)
 - Child Molestation in the Third Degree (RCW 9A.44.089)
 - Stalking (RCW 9A.46.110)
 - Residential Burglary (RCW 9A.52.025)
 - Violation of a temporary, permanent, or final protective order issued pursuant to chapter 7.90, 9A.46, 10.14, 10.99, 26.09, or 26.50
 - Unlawful Discharge of a Laser in the First Degree (RCW 9A.49.020)
 - Unlawful Discharge of a Laser in the Second Degree (RCW 9A.49.030)

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Stalking

– RCW 9A.46.110 (Gross Misd. / Class C Felony)

1. Without lawful authority and under circumstances not amounting to a felony attempt of another crime:
 - a. A person intentionally and repeatedly harasses or repeatedly follows another person; AND
 - b. The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or another person; AND
 - c. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; AND
 - d. The stalker either:
 - Intends to frighten, intimidate, or harass the person; -OR-
 - Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.
2. Attempts to contact or follow the person, after being given actual notice the person does not want to be contacted or followed, constitutes prima facie evidence of stalking.



Misdemeanor Presence Exception?
YES

- Class C Felony if:*
- Stalker has previously been convicted in this state or any other state for any crime of harassment of the same victim or members of the victim's family or household or any person specifically named in a protective order; -OR-
 - Stalking violates any protective order protecting the person being stalked; -OR-
 - Stalker has previously been convicted of a Gross Misdemeanor or felony stalking offense for stalking another person; -OR-
 - Stalker was armed with a deadly weapon while stalking the victim; -OR-
 - Victim was a law enforcement officer, judge, juror, attorney, victim advocate, legislator, community corrections officer, employee of a correctional agency, or employee of CPS or APS, and the stalker stalked the victim to:
 - Retaliate against the course of official duties, or
 - Influence the victim's performance of official duties; -OR-
 - Victim is a current, former or prospective witness in an adjudicative proceeding, and the stalking is to retaliate as a result of the victim's testimony or potential testimony.

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Stalking

– RCW 9A.46.110 (Gross Misdemeanor)

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- ⊗ 3. It is *not a defense* that the stalker was not given actual notice that the person did not want the stalker to contact or follow the person.

- ⊗ 4. It is *not a defense* that the stalker did not intend to frighten, intimidate or harass the person.

- √ 5. It is a *defense* if the defendant is a licensed private detective acting within the capacity of their license.

- 6. **“Follow”**
 - a. Deliberately maintaining visual or physical proximity to a specific person over a period of time;

-OR-
 - b. Repeatedly and deliberately appears at the person's:
 - Home, or
 - School, or
 - Place of employment, or
 - Business, or
 - Any other location to maintain visual or physical proximity to the person;

-OR-
 - c. Any of the above actions is sufficient to find that the alleged stalker followed the person. It is not necessary to establish that the stalker follows the person while in transit from one location to another.

- 7. **“Protective Order”** means any temporary or permanent court order prohibiting or limiting violence against harassment of, contact or communication with, or physical proximity to another person.

- 8. **“Repeatedly”** means on two or more separate occasions.

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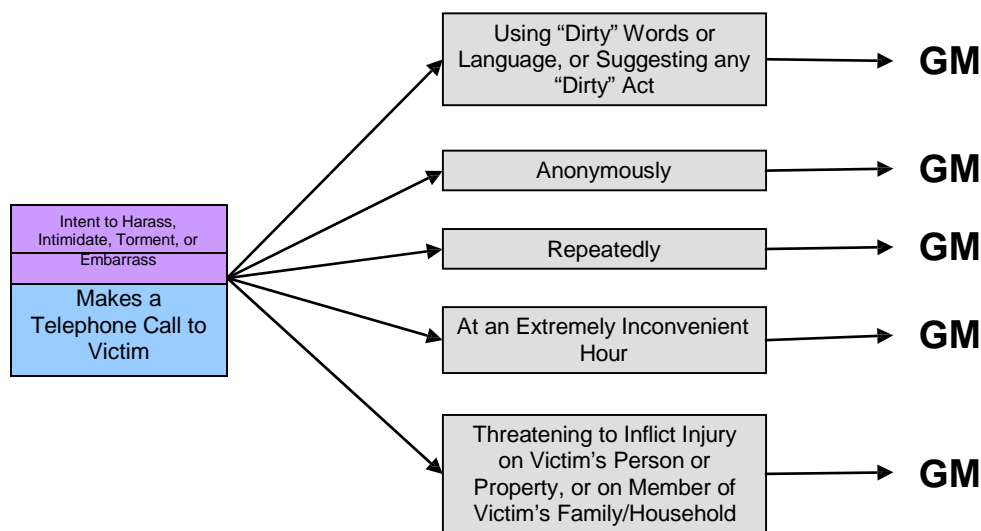
Telephone Harassment

– RCW 9A.46.060 (Gross Misd. / Class C Felony)

1. Every person who, with *intent to harass, intimidate, torment or embarrass* any other person, shall make a telephone call to such other person:
 - a. Using any lewd, lascivious, profane, indecent, or obscene words or language, or suggesting the commission of any lewd or lascivious act;

-OR-
 - b. Anonymously or repeatedly or at an extremely inconvenient hour, whether or not conversation ensues;

-OR-
 - c. Threatening to inflict injury on the person or property of the person called or any member of his or her family or household.



Misdemeanor Presence Exception:

MAYBE - FOR THE LEWDNESS

NO - FOR THE INCONVENIENT CALLS

YES - FOR THE THREATS

Class C Felony if:

- That person has previously been convicted of any crime of harassment, as defined in RCW 9A.46.060, with the same victim or member of the victim's family or household or any person specifically named in a no-contact or no-harassment order in this or any other state;

-OR-
- That person harasses another person by threatening to kill the person threatened or any other person.

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Cyberstalking

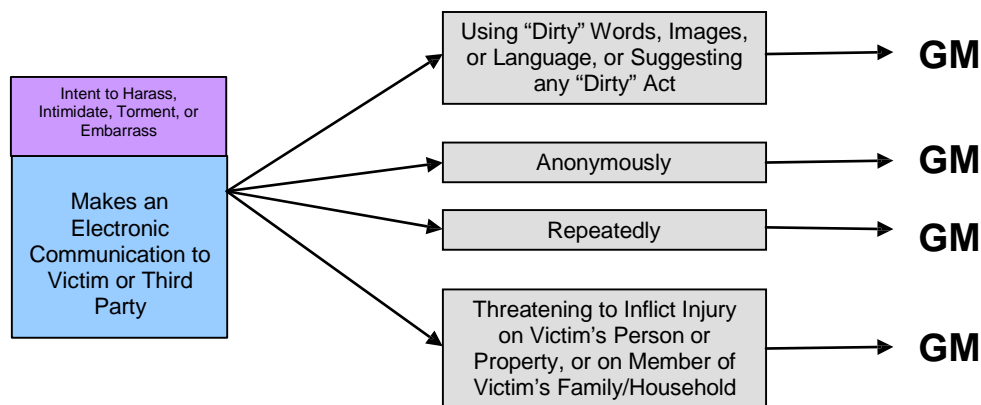
– RCW 9.61.260 (Gross Misd. / Class C Felony)

1. Every person who, with *intent to harass, intimidate, torment or embarrass* any other person, and under circumstances not constituting telephone harassment, makes an electronic communication to such other person or a third party:
 - a. Using any lewd, lascivious, indecent, or obscene words, images, or language, or suggesting the commission of any lewd or lascivious act;

-OR-
 - b. Anonymously or repeatedly whether or not conversation occurs;

-OR-
 - c. Threatening to inflict injury on the person or property of the person or any member of his or her family or household.

2. **"Electronic communication"** means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. It includes electronic mail, internet-based communications, pager service, and electronic text messaging.



Misdemeanor Presence Exception:

MAYBE - FOR THE LEWDNESS

NO - FOR THE INCONVENIENT COMMUNICATION

YES - FOR THE THREATS

Class C Felony if:

- *That person has previously been convicted of any crime of harassment, as defined in RCW 9A.46.060, with the same victim or member of the victim's family or household or any person specifically named in a no-contact or no-harassment order in this or any other state;*

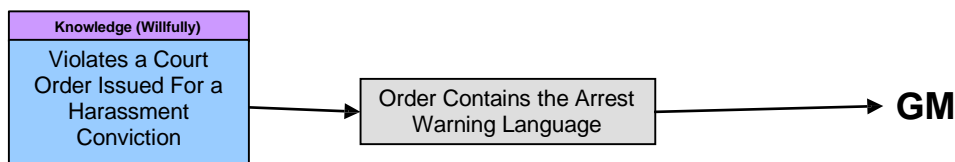
-OR-
- *That person harasses another person by threatening to kill the person threatened or any other person.*

17 – Harassment & Court Orders

[Upon Harassment Conviction, Violation of] _____ Order Restricting Contact

– RCW 9A.46.080 (Gross Misdemeanor)

1. Willful violation of a court order issued under this section (for a suspect found guilty of Harassment) is a Gross Misdemeanor.
2. The written order shall contain the court's directives and shall bear the Criminal Legend: "Violation of this order is a criminal offense under chapter RCW 9A.46 and will subject a violator to arrest."



Misdemeanor Presence
Exception?

MAYBE

Non-Liability of Peace Officer

– RCW 9A.46.090

1. 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 harassment brought by any party to the incident.

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Protection Order / Order for Protection

– RCW 26.50

1. Issued by any court at the petitioner's request because of danger from a family or household member.
2. Sometimes called "DV Protection Orders."
3. No Criminal Legend or arrest language is necessary in the wording of a Protection Order. All Protection Orders are enforceable by arrest. They are issued because the petitioner has convinced a judge that he/she is in danger.
4. Certain behaviors are prohibited by the order. Typical violations include:
 - a. Threats,
 - b. Coming onto the grounds of daycare, workplace, school, or residence,
 - c. Making contact (even through third parties),
 - d. Distance violations.

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Violation of a Protection Order

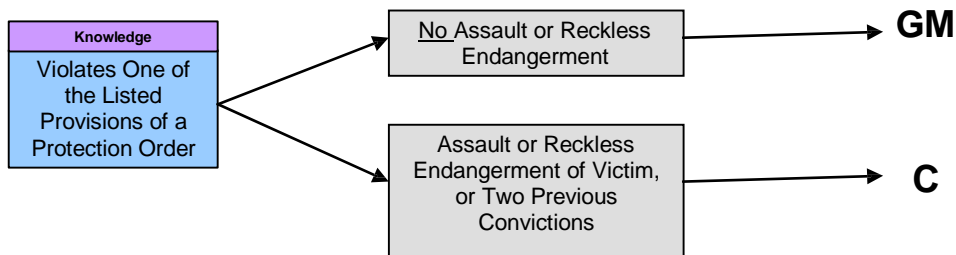
– RCW 26.50.110 (Gross Misd. / Class C Felony)

1. A person *knowingly* violates any of the following provisions of a Protection Order:
 - a. Prohibitions against acts or threats of violence against, or stalking of, a protected party;
-OR-
 - b. Prohibitions against contact with a protected party;
-OR-
 - c. Exclusions from a residence, workplace, or daycare;
-OR-
 - d. Prohibitions against knowingly coming or remaining within a specific distance of a location;
-OR-
 - e. Prohibitions against interference with efforts of a protected party to remove a pet;
-OR-
 - f. Anything in a foreign protection order indicating that a violation will be a crime.
2. Violation of this type of order will be a Class C Felony if the violator assaults or recklessly endangers the victim, or if there are two previous convictions for violation of court orders.

Misdemeanor Presence Exception?
MAYBE

Mandatory DV arrest if the violation was:

- Contact,
- Threats,
- Acts of violence, or
- Exclusion (stay away) & restraint provisions



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No-Contact Order / Order Prohibiting Contact

– RCW 10.99

1. Issued by any criminal court during a D.V. prosecution or after the defendant has been found guilty.
2. Usually served to the respondent at court before release.
3. Sometimes called “DV No-Contact Orders.”
4. To enforce, the order must contain this Criminal Legend:
“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.”

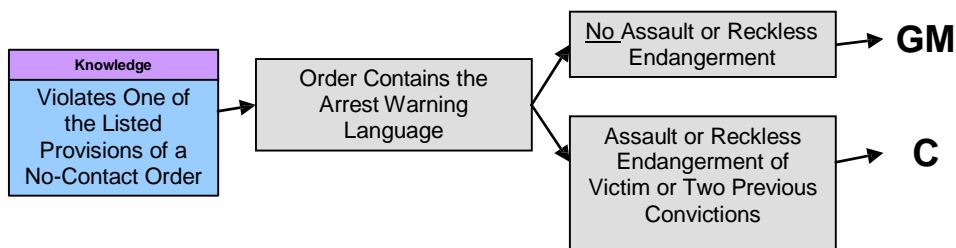
17 – Harassment & Court Orders

Violation of a No-Contact Order

– RCW 26.50.110 (Gross Misd. / Class C Felony)

1. A person *knowingly* violates any of the following provisions of a No-Contact Order:
 - a. Prohibitions against acts or threats of violence against, or stalking of, a protected party;
-OR-
 - b. Prohibitions against contact with a protected party;
-OR-
 - c. Exclusions from a residence, workplace, or daycare;
-OR-
 - d. Prohibitions against knowingly coming or remaining within a specific distance of a location;
-OR-
 - e. Prohibitions against interference with efforts of a protected party to remove a pet;
-OR-
 - f. Anything in a foreign protection order indicating that a violation will be a crime.

2. Violation of this type of order will be a Class C Felony if the violator assaults or recklessly endangers the victim, or if there are two previous convictions for violation of court orders.



Misdemeanor Presence Exception?
YES

Automatic mandatory DV arrest. No-Contact orders are issued because of an on-going DV situation.

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Restraining Order

– RCW 26.09, 26.10, 26.26

1. Issued by Superior Court in divorce, child custody, or paternity disputes.
2. There may not have been DV in the past, but a violation of this order can be considered a DV crime.
3. To enforce, the order must contain this Criminal Legend:
"Violation of this order with actual notice of its terms is a criminal offense under chapter 26.50 and will subject violator to arrest."

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Violation of a Restraining Order

– RCW 26.50.110 (Gross Misdemeanor)

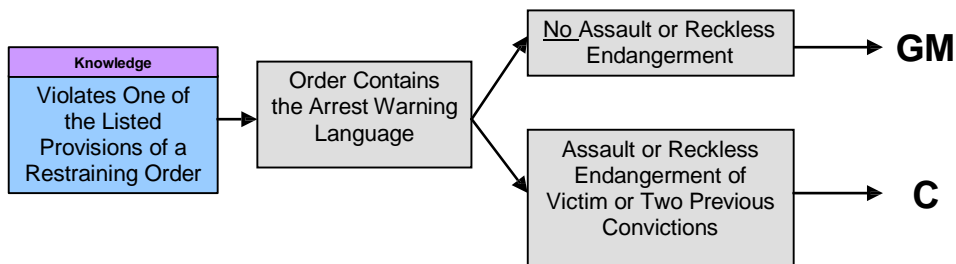
1. A person *knowingly* violates any of the following provisions of a Restraining Order:
 - a. Prohibitions against acts or threats of violence against, or stalking of, a protected party;
-OR-
 - b. Prohibitions against contact with a protected party;
-OR-
 - c. Exclusions from a residence, workplace, or daycare;
-OR-
 - d. Prohibitions against knowingly coming or remaining within a specific distance of a location;
-OR-
 - e. Prohibitions against interference with efforts of a protected party to remove a pet;
-OR-
 - f. Anything in a foreign protection order indicating that a violation will be a crime.

2. Violation of this type of order will be a Class C Felony if the violator assaults or recklessly endangers the victim, or if there are two previous convictions for violation of court orders.

Misdemeanor Presence Exception?
MAYBE

Mandatory DV arrest if the violation was:

- Contact,
- Threats,
- Acts of violence, or
- Exclusion (stay away) & restraint provisions



17 – Harassment & Court Orders

Anti-Harassment Order / Harassment Order

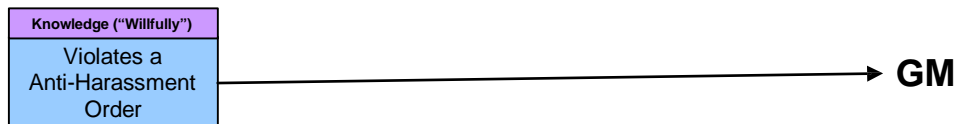
– RCW 10.14

1. Anyone can petition any court for this type of order because they are annoyed, alarmed, or harassed by another person.
2. These are not D.V. orders.

Violation of an Anti-Harassment Order

– RCW 10.14.170 (Gross Misdemeanor)

1. A person *willfully* violates an Anti-Harassment Order.
 - a. Assault or reckless endangerment of the victim does NOT make a violation of this type of order a felony.



Misdemeanor Presence
Exception?
MAYBE

17 – Harassment & Court Orders

“Sole Responsibility”

– RCW 26.50.035[1][c] & RCW 10.99.040[4][b]

- ⊗ 1. It is not a defense that the petitioner allowed, invited, or encouraged the respondent to violate the order.
 - a. 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. . . .”
 - b. 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.”
 - c. This wording is included in the text of the court order.

*“**Petitioner**” is the person that petitioned (asked) for the order, or the person that the order protects.*

*“**Respondent**” is the person that must “respond” to the order’s rules.*

