

# Criminal Issues

# DV Crimes

- In WA state, “DV” is not a separate crime
  - Instead, “DV” is a label attached to existing crimes to indicate that the crime occurred against a “family or household member”
- Typical examples of crimes with the DV modifier
  - assault, violation of court order, malicious mischief, interference w/ making report, telephone harassment, harassment, burglary
- Not-as-typical examples
  - Rape, stalking, reckless endangerment, unlawful imprisonment, reckless driving, witness tampering

# Duties of Law Enforcement in DV cases

- Law enforcement must:
  - make a report,
  - investigate,
  - give a case number,
  - give information about rights, remedies & resources,
  - forward report to prosecutor
- If no arrest made: notify victim of right to initiate proceedings by citation

[RCW 10.99.030](#)

# Duties of Law Enforcement in DV cases

## Mandatory Arrest for DV Assault

- If: law enforcement has probable cause to believe
  - Within previous 4 hours
  - A suspect aged 16 years old or older
  - Committed felonious assault, assault, or causing fear of bodily injury or death
  - Against a family or household member
- Then: law enforcement **shall** arrest the primary aggressor
- Discretionary arrest is still allowed, though law enforcement needs to take the additional step of obtaining an arrest warrant

# Duties of Law Enforcement in DV cases

## Mandatory Arrest for Court Order Violations

- If: law enforcement has probable cause to believe
  - A suspect willfully violated certain provisions
    - Restraint provisions
    - Location & distance provisions
  - Of a valid protective order (incl. out of state or tribal orders)
  - That the suspect had knowledge of
- Then: law enforcement **shall** arrest
  - No 4 hour rule
- Assault or Reckless conduct + court order violation = felony
- 2 court order violation convictions + another violation = felony

[RCW 10.31.100 \(2\)](#)

# Victims' Rights

- According to our state's Crime Victims' Bill of Rights, victims have the right:
  - To be informed about the status of the criminal case
  - To be protected from harm while cooperating with police & prosecution
  - To have access to medical assistance without unreasonable delay
  - To have a victim advocate present at interviews & court proceedings
  - To be present in court during trial (as much as possible)
  - To submit (and present) a victim impact statement
  - To have restitution paid by the defendant

[RCW 7.69.030](#)

# Criminal Legal Cases:

## Role of Advocates

- Help survivor understand what's going on & where to go for more information
- Help survivor understand what might happen next with the case
- Safety plan around abuser's reaction
- Discuss No Contact Orders – whether one has been issued, what it means, and the process for requesting changes to the order
- Explain the role of system-based advocates

# Court orders



WA state\* has 6 different protective orders that are most relevant to domestic violence legal advocates:

1. [Domestic Violence Protection Orders](#)
2. [Criminal No Contact Orders](#)
3. [Restraining Orders](#)
4. [Sexual Assault Protection Orders](#)
5. [Anti-Harassment Orders](#)
6. [Vulnerable Adult Protection Orders](#)

*\*Many tribal courts have similar civil and criminal court orders. [Check with your local Tribal Court for details.](#)*

# DV Protection Orders

- Specifically for DV survivors
- Can petition for self and/or on behalf of children
- Survivor must have experienced DV, defined as
  - Physical harm, bodily injury, assault, sexual assault or stalking
  - OR infliction of fear of imminent harm, etc.
  - By a “family or household member”
- Police report not required
- Free

# DV Protection Orders

- Protections available:
  - No contact, no coming to location or within certain distance
  - Temporary custody and/or visitation schedule & no taking out of state
  - Surrender firearms, pay legal fees, go to treatment or counseling
  - Obtain essential personal effects
  - Civil standby

# Criminal No Contact Orders

- Attached to criminal case
- Prosecutor requests/judge imposes
- Only protects named victim(s) in the case
- Typically, existence of order = proof of service
- May go away when case is dismissed and/or resolved
- Survivor can request to have the order changed or dropped, but the court is not obligated to grant the request

# Restraining Orders

- Must be married or have child in common
- Attached to family law case
  - Dissolution, legal separation
  - Paternity, parentage action
  - Parenting plan, modification
- Survivor may have to pay a filing fee associated with family law case
- Restraining orders, as part of a family law case, can also address financial & other concerns
  - Order child support
  - Order spousal support
  - Restrain from liquidating assets or acquiring new debt
  - Assign debts, access to/use of property
  - Require treatment and counseling

# Sexual Assault Protection Orders

- No relationship requirement
- Survivor must have experienced “nonconsensual sexual conduct or penetration”
- Police involvement is not required
- Among other things, can restrain respondent from shared school
- Free
  
- Note: Must use the DVPO instead if the victim and offender have a “family/household member” relationship

# Anti-Harassment Orders

- No relationship to respondent needed
- Often obtained against stalkers or non-related, non-intimate harassers
- Can petition for self or on behalf of children
- Allege “unlawful harassment”
  - Knowing & willful course of conduct which annoys, alarms, or harasses & serves no lawful purpose
  - AND causes emotional distress
- Filing fee
- Note: may be used by DV victims if the survivor does not want to allege DV or has not experienced the legal definition of DV, or if the victim and abuser don't meet the definition of “family/household member”

# Vulnerable Adult Protection Orders

- “Vulnerable adult” has a specific legal definition:
  - 60+ & unable to care for self
  - OR legally “incapacitated”
  - OR developmental disability
  - OR admitted to facility OR
  - receiving home health, hospice, home care services
- Can be filed by vulnerable adult or by legal guardian
- Survivor must have experienced abandonment, abuse, financial exploitation, neglect or threats of the above
- Filing fee can be waived for low-income persons
- Among other protections, can require an accounting of disposition of petitioner’s income or other resources, restrain transfer of property



# Court Orders:

## Role of Advocates

- Know different types of orders & process to obtain them
- Discuss pros & cons of obtaining an order
- Safety planning
  - How does protective order fit into overall safety plan
  - Safety planning before, during and after getting a protective order
  - Planning for what to do if the order is violated