

Essential Things to Know

About the legal system, legal options,
and legal protections for domestic violence
victims and their children

Whirlwind Tour

- You are about to take yourself on a whirlwind reading tour of legal options for DV survivors.
- Please realize that legal advocates spend YEARS learning this information, so don't panic if it doesn't sink in all at once.
- Re-read these slides from time to time, get help from your co-workers, and contact WSCADV for more information.

Contents

- Basics about the legal system
 - Differences between criminal & civil legal system
- Criminal issues
- Court orders
- Family law issues
- Other civil legal issues

Overview of the Legal System in WA

- Branches of government
- Rules of the legal system
- Legal definition of domestic violence
- Criminal vs. civil legal system

Branches of Government

- Like all states, WA has three branches of government modeled after the federal structure:
 - Legislative
 - Executive
 - Judicial
- Each branch has separate powers and separate responsibilities to the public

Branches of Government

- The Legislative Branch writes the laws
 - Composed of the Senate and the House of Representatives.
 - The Senate has 49 elected members corresponding to the number of legislative districts in the state.
 - The House has 98 elected members, two for each district.

http://access.wa.gov/government/three_branches.aspx

- Who are your representatives? Do they know about the needs of domestic violence survivors and their children?

Branches of Government

- The Executive Branch implements the laws
 - Bills passed by the Legislature are sent to the Governor to be signed or vetoed.
 - The Executive Branch includes the Governor and other elected state officials. These individuals implement the laws passed by the Legislature.
 - The Governor has the power to appoint members of the Judicial branch.

http://access.wa.gov/government/three_branches.aspx

- Who is our current governor? Has our current governor spoken out about the problem of domestic violence?

Branches of Government

- The Judicial Branch enforces the laws
 - Composed of the state courts:
 - Trial court (Municipal, District and Superior),
 - Court of Appeals, and
 - Supreme Court
 - State courts make rulings on the constitutionality and legality surrounding the implementation of a law, as passed by the Legislature and signed by the Governor.

http://access.wa.gov/government/three_branches.aspx

- Judicial decisions can make powerful statements about the value of protecting victims and holding offenders accountable. What messages are your local judicial officers sending to the community?

Rules of the Legal System

The rules that the legal system has to follow come from:

- **Statute: Revised Code of Washington (RCW):**
 - Must be voted on by state legislature or changed by voter initiative
 - Subject to change and compromise to get passed into law
- **Regulations: Washington Administrative Code (WAC):**
 - Regulations for state agencies and their contractors to follow
 - Not passed by legislature, but have the force of law
- **Court Rules: Washington General Rules (GR):**
 - Determined by the Washington Supreme Court and must be followed in the court system. General Rules provide guidance on how the courts operate. Local courts may adopt additional Local Rules at the county level.

Rules of the Legal System

The legal system also looks to:

- **Case Law**
 - Legal conclusions that are a result of court decisions on a particular topic and give guidance to help interpret laws.
- **Policies, protocols, manuals**
 - Locally developed operational guides for each agency.
- **Professional codes of ethics**
 - These are unique and specific to each discipline (for example, judicial officers, attorneys, law enforcement officers, treatment providers, etc.)
- **Unwritten rules & practices**
 - Every organization and system develops their own micro-culture of norms and unwritten expectations. While these aren't necessarily the "official" rules for doing business, unwritten rules and practices often have a big influence on how individual workers within a system do their jobs.

Legal Definition of DV

DV Advocacy Programs use a broader definition of domestic violence and tend to focus on abuse within intimate partner/romantic relationships. The legal definition of DV only includes the behaviors listed below, and includes more relationships.

Domestic Violence* is

- Physical harm
- Bodily injury
- Assault
- Infliction of fear of imminent physical harm, bodily injury or assault
- Sexual assault
- Stalking

RCW 26.50.010 (1)

between Family / Household Members*

- Current or former spouses, partners, roommates
- Current or former dating partners where
 - Petitioner is 13+ and
 - Respondent is 16+
- Co-parents
- Parents & children (incl. step & grand)
- Adult relatives

RCW 26.50.010 (2)

Criminal vs. Civil Legal System

- Legal advocates need to understand the differences between the criminal and civil legal systems, which include:
 - Who's typically involved in the cases
 - What's happening
 - Possible outcomes

Criminal vs. Civil Legal System

- Our criminal legal system is responsible for investigating, prosecuting, sentencing and monitoring criminal behavior.
- A lot of abusive behavior is also criminal behavior and may be dealt with within the criminal legal system.

Criminal vs. Civil Legal System

- Some abusive behaviors are not defined as crimes and will not be addressed by the criminal legal system, but the civil legal system may have remedies that are helpful.

Criminal Court System

- A matter comes to criminal court when a criminal statute is violated.
- People who are charged with committing a crime can hire a private attorney to defend them.
- If the accused cannot afford an attorney, the state will provide public defenders, or assigned counsel.

Excerpted and adapted from *Basic Educational Resource To Help Advocates: A practical guide to working at a domestic violence program in Washington State*, "Chapter 5 - Legal Issues," pgs. 14-15, Washington State Coalition Against Domestic Violence, reprinted January 2001.

Criminal Court System

- The victim is a witness for the state. The state hires attorneys, known as prosecutors, to represent “the people” and bring the case to trial.
- A trial happens either before a judge and jury, or before only a judge if the accused doesn’t want a jury.
- A person accused of a crime is presumed innocent until proven guilty.

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Criminal Court System

- Guilty in criminal matters means “beyond a reasonable doubt.”
 - “is part of jury instructions in all criminal trials, in which the jurors are told that they can only find the defendant guilty if they are convinced ‘beyond a reasonable doubt’ of his or her guilt.”
 - By comparison, it is meant to be a tougher standard than ‘preponderance of the evidence,’ used as a test in a civil (non-criminal) case.

-from the definition of ‘beyond a reasonable doubt’ at dictionary.law.com

Criminal Court System

- Domestic violence victims are usually involved in the criminal court systems as witnesses for the state when the police arrest their abusers for domestic violence related crimes.
- Generally, victims have no control over whether the prosecutor will charge or drop charges against their abuser – victims do not press charges in criminal court, the state does.
- Law enforcement will not charge or make an arrest unless a law has been broken.

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Criminal Legal System - Summary

- Who are the parties in the case?: Government vs. defendant
- Which people are typically involved?: Prosecutors, defense attorneys/public defenders, defendants, victims, witnesses
- What's happening?: Defendant is accused of committing a crime
 - Misdemeanor
 - Gross Misdemeanor
 - Felony
- Basis for pressing charges: "Probable cause" to believe the defendant committed the crime(s)
- Burden of Proof: Prosecutor must prove *beyond a reasonable doubt* that the defendant committed the crime(s)
- Possible outcomes:
 - Jail/prison; probation/parole; fines, fees, evaluations, loss of rights, loss of opportunities, potentially stiffer penalties over time

Civil Court System

- Involves non-criminal problems – known as civil matters.
- A civil matter generally involves private parties.
- People, corporations, or governments voluntarily bring the issue to civil court.
- Both parties must comply with the ruling of the court.
- Generally involves property ownership, liability and legal relationships (like marriage, child custody, divorce).

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Civil Court System

- Generally, each party can hire a private attorney if they can afford one.
- The judge decides who wins based on the preponderance of the evidence.
- “This preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence.”

-from the definition of

‘preponderance of evidence’ at dictionary.law.com

Civil Court System

- Generally, sentencing or jail are not results of a civil ruling. (However, people can go to jail if they defy a civil court order, ruling, or are found in contempt of court.)
- Often, there may be cash or property settlements that one party pays to another, or other prohibitions or requirements.
- As part of a civil settlement, parties may pay fees for using the courts or civil fines.
- DV survivors enter the civil court system when they seek a divorce, settle property disputes, try to get custody of their children, or apply for civil protective orders.

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Civil Legal System - Summary

- Who are the parties in the case?: Petitioner vs. respondent
- Which people are typically involved?: Private attorneys and/or *pro se* litigants (people who are representing their selves)
- What's happening? One party is asking the court to resolve a dispute or make some other intervention
 - Examples: Personal injury lawsuit, divorce & child custody cases, small claims court, class action lawsuits, protective orders
- Basis for bringing the case: "Reasonable grounds to believe" that something improper happened or that relief is warranted
- Burden of Proof: Generally, the party bringing the case must prove by a *preponderance of the evidence* that the other party has done something wrong or that relief is warranted
- Possible outcomes:
 - Pay damages/fines/fees; division or assignment of property, assets, debts or rights; child custody/visitation arrangements; other reparations can be ordered; mandatory evaluations; ordered to stop, start or continue doing something; contempt of court with possible jail time