

# **Legal Advocacy Essentials**

## **A core training for legal advocates**

### Table of Contents

#### **What is a legal advocate?**

Legal advocacy, safety & self-determination

Legal advocacy Do's & Don'ts

Legal advocacy vs. legal advice & the unauthorized practice of law

#### **Criminal legal issues**

Duties of law enforcement

DV Crimes

How criminal cases proceed

System-based advocates

Crime Victims' Bill of Rights

Crime Victims Compensation

Frequently Asked Questions for Victims in DV Criminal Cases

Role of community-based DV advocate

Survivors arrested for/charged with DV ("victim-defendants")

Batterer Intervention Programs

Practical Strategies for DV Advocates

#### **Civil legal issues**

Protective Orders – General information

Role of Advocates

No Contact Orders

Protection Orders

Anti-Harassment Orders

Restraining Orders

Sexual Assault Protection Orders

Vulnerable Adult Protection Orders

Full Faith & Credit

Divorce & Legal Separation

Parenting Plans

Paternity & Parentage Actions

Family court services, GALs, parenting evaluators & CASA volunteers

Role of Advocates in Family Law issues

Working with Attorneys

Pro Se & Unbundled legal services

Parental Kidnapping

Lawsuits

Interpreters

Immigration information

Legal Advocacy Essentials: a core training for legal advocates

Presented by the Washington State Coalition Against Domestic Violence, 2008.

This information is not intended as a substitute for legal advice.

Confidential identity  
APS & CPS  
DSHS Public Assistance  
Employment issues  
Housing issues

RCWs, WACs and GRs to know and love

# What is a legal advocate?

## Legal Advocacy, Safety & Self-Determination

- Most survivors have legal needs & will want to discuss legal matters.
- Legal actions can positively or negatively impact survivors' short term & long term situation regarding liberty, safety, employment, housing, custody, immigration status, and finances.

### What is a legal advocate's role?

- Listen/support as survivors share their experiences, including their experiences with the legal system
- Discuss potential legal options
- Discuss potential benefits and consequences of pursuing (or not pursuing) legal options
- Help survivor safety plan around legal choices
- Validate and normalize the legal choices survivors make
- Universalize survivor's situation with larger social issues like oppression
- Provide legal information and referrals to legal resources

### Why is it so important to support safety and self-determination?

- Abusers aim to undermine survivors' control over their lives, their dignity and their safety
- Survivors may *literally* not have a lot of control over their situation or may *feel* like they don't have a lot of control—it is critical to assist them in maximizing what little control and autonomy they have left
- Survivors have already dealt with one controlling, critical, intimidating and demanding person—they do not need an advocate to be like that
- Self-determination is a pre-requisite to safety
- Others may not support a survivor's right to self-determination and/or may not look out for a survivor's safety. Community-based advocates may be the only ones in a survivor's life who are not judgmental, supports the survivor's decisions, and puts the survivor's safety first

### How does self-determination become compromised?

- Misinformation or lack of information about legal system and their legal rights/options
- Unsafe, inadequate, short-sighted and/or hasty decisions are often made as a result of pressure from others:
  - abuser
  - kids/family/friends
  - employer/co-workers
  - therapist
  - service providers
  - CPS &/or DSHS
  - police/courts
  - self-help books
  - media
  - religious organization

## Legal advocacy Do's & Don'ts

### Do:

- Allow survivors to make own decisions
- Allow survivors to express ambivalence toward their abuser
- Ask: “How can I be of help to you?” and “What would you like to have happen?”
- Accept that survivors’ opinions and solutions may change over time
- Acknowledge that there are understandable and legitimate reasons for
  - Returning to abuser or staying with abuser
  - Not calling 911
  - Not cooperating with prosecution
  - Not seeking child support
  - Not wanting to go to support group
  - Not wanting to go to shelter
  - Not wanting to get a divorce
  - Not wanting to get a protective order
  - Not reporting violations of a protective order
  - Not calling CPS
- Help survivor identify what those reasons are
- Validate that the system could be more responsive to needs of survivors
- Explore legal and non-legal options
- Discuss what survivor has tried in the past and what worked.
- Explore potential consequences of utilizing legal &/or law enforcement options
- Assist survivor in prioritizing; what is important to do now
- Help survivor mobilize their support system
- Build on survivor’s strengths
  - Specific ways survivors have protected themselves/kids
  - Methods used to stay safe when leaving or staying
  - Ways survivor has coped or stayed sane
  - Validate the courage demonstrated by talking about dv or seeking support/resources
- Raise concerns about safety whether survivor is with partner or not
- Discuss reality of separation violence and violence post separation
- Discuss safety around partner contact, visitation, service and court hearings
- Reinforce survivor’s concerns/fears as legitimate
  - “I remember you told me that the last time you got a PO, your partner violated it many times; I can see why you would be afraid to go back to court”
- Normalize and universalize
  - “I’ve talked with many survivors who have been arrested for defending themselves”
  - “Many survivors find that their partner continues to control them after separation”
- Discuss common barriers and benefits to leaving or using legal system
- Challenge self-blame by putting the survivor’s actions and decisions in context

## Legal advocacy Do's & Don'ts

### Don't:

- Make survivors feel obligated to meet the needs of the system
  - “If you don't come forward, the abuser will keep getting away with it”
- Give survivors pep talks or try to cheer them up—*reminding survivors of all the steps they've taken to date and all they've endured is different than trying to convince them they have something to be happy about or look forward to.*
- Praise survivors—*reflecting the pride survivors feel about their themselves and their accomplishments is different from conveying approval about the choices they've made.*
- Scold survivors
- Give survivors false reassurances
  - “Once you get child support everything will be better”
- Tell survivors what to do
  - “You should get a protection order if you want to protect your kids”
- Imply that there is a “right” or “wrong” way
- Interrupt or rush
- Make survivors feel guilty
- Treat survivors like a case
- Ask victim blaming or pointed questions
  - “Why did you go back?”
  - “What keeps you with a person like that?”
  - “Did you call 911/report the abuse?” (a less blaming approach could be to ask, “did the police ever respond to dv incident in your home?”)
- Viewing a return to the abuser as a failure
- Assuming separation from abuser makes survivor/kids more safe
- Underestimating the importance of finances and housing in survivor's legal and safety situation

## Legal advocacy vs. legal advice & the unauthorized practice of law

- It is illegal for advocates to practice law; advocates could be charged with a gross misdemeanor and each subsequent violation can be charged as class C felonies.
- The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law. It includes:
  - Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.
  - Selection, drafting or completion of legal documents or agreements which affect the legal rights of an entity or person(s).
  - Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process.
  - Negotiation of legal rights or responsibilities on behalf of another entity or person.
- Advocates are not attorneys
- Advocates do not give advice—especially not legal advice. Nor do advocates tell survivors what “should” be done or what is the “right” way. There is no “right” nor “wrong” way to respond to a domestic violence situation or to a survivor’s legal situation
- Advocacy is not a substitute for legal advice nor legal representation
- An advocate’s role is to try to provide an overview of the legal issues survivors may face and to give information about basic legal options
- Court accompaniment by advocates is not the same as legal representation
- Survivors are their own best advocates
- Survivors ultimately know better than anyone how best to keep themselves safe (physically, emotionally, financially, legally); advocate’s role is to present different legal options, explore the pros/cons of these options and assist in safety-planning around these options

# Criminal legal issues

## Duties of law enforcement

- Role of the police is to keep the peace and assure safety
- Police must:
  - make a report each time they respond to a DV incident
  - investigate to determine if a crime has been committed
  - give crime victims a case number
- According to WA State Law, DV is defined as violence among “family or household members”:
  - *persons related by blood or marriage*
  - *persons who live or have lived together*
  - *persons who have a child in common*
  - *persons who have or have had a dating relationship*
- If there is “probable cause” (*sufficient cause to believe a crime was committed*) to arrest a suspect for a DV-related crime AND the crime occurred within the preceding four hours, the police must make an arrest
  - If the police establish probable cause later, police may make a discretionary arrest or a summons request to the prosecutor may be made. The prosecutor may then issue a summons to the suspect requiring an appearance in court.
- If the crime is DV-related & there is probable cause, police must arrest the “primary aggressor”
- In making the primary aggressor determination, officers must make “every reasonable effort to consider”: the comparative extent of injuries inflicted or serious threats creating fear of injury and the history of DV between the persons involved
- If both parties assaulted each other, police do not have to arrest both persons
- Survivors can contact the police if bruises or other injuries develop after the incident—it is encouraged to have photographs taken at various intervals throughout the healing process
- If arrest is made, police must:
  - give survivor verbal/written info on how:
    - case will proceed
    - to convey concerns to prosecutor
    - to access DV resources
  - make a complete police report
  - preserve evidence

- take pictures of injuries
  - document property damage
  - take weapons used by abuser
- Police may offer to transport (or arrange transport) survivor to hospital/shelter/safe place
- Survivors may be asked to sign a medical release form at the hospital which allows the hospital to release records from any medical exam to the police or prosecutor so they can further investigate the crime—signing these forms does not obligate survivors to go to court to testify against the suspect
- Police response to a call is based: seriousness of offense & availability of police units
- Survivors wanting to report a crime need to make the report in the area where the crime took place; following up on a report is also most successful when directed to the relevant police department
- Police can only respond in their area of jurisdiction
- City Police Depts: investigate criminal acts that occur within their city limits
- County Police Depts: investigate crimes that occur in unincorporated areas of their county
- State Patrol: mainly provides traffic enforcement throughout the state
- Federal Bureau of Investigation: investigates federal offenses for persons 18 years or older
- Police also perform “civil standbys” where they accompany offenders to the home (after notifying victims) so offender can quickly (10-15 minutes) gather essential personal effects. Offenders are not allowed to wander freely or be alone with victims. Usually the court only allows one civil standby.



## DV Crimes

Contrary to popular belief, in WA state there isn't an actual crime called "domestic violence". Rather, there are an array of crimes that can be classified as DV-related if the crime involved a "family or household member". For example:

- Assault--can include any of the following:
  - assault
  - sexual assault
  - stalking
  - bodily injury
  - physical harm
  - or any physical action intended to cause fear of imminent serious bodily injury or death
  
- Rape—marital rape is illegal
  - Rape 2 = mentally incapacitated (asleep, drunk, high, unconscious)
  - Rape 3 = lack of consent demonstrated by words or conduct/threat to harm victim's property (may not apply if rapist is spouse)
  
- Unlawful imprisonment
  
- Reckless endangerment
  
- Harrassment
  
- Malicious Mischief
  
- Criminal Trespass
  
- Intimidating/Tampering with witness
  
- Interference with making of a police report
  
- Coercion
  
- Taking of a motor vehicle

## How criminal cases proceed

### REPORT

- Statements taken at scene or later (suspect may or may not be arrested and taken to custody)

### INVESTIGATION

- Police, detectives or sheriff gather more info/evidence

### PROSECUTOR MAKES INTIAL CHARGING DECISION

- Attorney who works for city, county or state
- Reviews the case to see if enough evidence to start court case (“pressing charges”)
- If not enough evidence, survivor should receive explanation via letter

### SUMMONS

- Notice to appear in court for arraignment (if the suspect is not already in custody)

### ARRAIGNMENT

- Court appearance where prosecutor formally charges defendant with the crime
- Low income defendants are notified of their right to a public defender & given instructions on how to apply for one
- Victim does not need to be present in court
- Victim may have opportunity to tell the prosecution their preference as to whether the defendant should be allowed on home monitoring, offered a plea agreement and/or whether a No Contact Order (NCO) should be put in place against the defendant
- NCO may be entered
- Victim can contact records department, prosecutor or court advocate for copy of NCO
- Defendant enters plea or guilty or not guilty
  - NOT GUILTY PLEA
    - Judge will ask whether defendant wants bench (judge only) or jury trial
    - Prosecutor may indicate whether defendant is preliminarily eligible for a special plea agreement, such as a stipulated order of continuance (SOC)
    - Bail amount is set by judge after defendant gets chance to give input on the matter
    - Judge sets date defendant must return for pretrial
    - Defendant (if in custody) is usually released the same day once bail is posted
  - GUILTY PLEA
    - Judge will schedule sentencing hearing at which time a sentence may be imposed

- Judge may request that a pre-sentence investigation report (PSI) be completed by probation and will set another date for sentencing

## PRETRIAL

- Subsequent hearing where defendant can change plea or set trial date
- If defendant pleads not guilty & is eligible for a plea agreement (such as an SOC), judge may impose the agreement in lieu of setting trial date
- If defendant pleads guilty (same as above)

## SPECIAL PLEA AGREEMENTS

- The names and conditions of these may vary by jurisdiction
  - Stipulated Order of Continuance (SOC), Deferred Prosecution, Stay of Proceedings (SOP)
- A voluntary agreement by both the defendant and the prosecutor to delay the case for a period of time. If defendants are eligible and complete all conditions, pending criminal charges are dismissed and defendants will not have a criminal conviction on their record. If the defendant does not comply with the conditions, the agreement may be revoked.
- The following factors may be considered when determining eligibility:
  - Defendant's criminal record
  - Defendant's attitude (demonstrates a sincere desire to comply with conditions)
  - Defendant's history of DV
  - Victim's input and circumstances of the case
- Special plea agreement conditions may include any or all of the following as recommended by probation and/or the prosecutor:
  - Attend and complete a state-certified Batterer's Intervention Program
  - Abide by all court orders
  - Attend and complete parenting classes, chemical dependency treatment or mental health counseling
  - Have no further criminal arrests or convictions
  - Pay court costs
  - Be under supervised probation

## TRIAL

- Hearing where a finding is made as to guilt or innocence of defendant
- May be heard in front of a jury or only the judge
- Continuances (when hearing or trial is postponed) may be granted
- Prosecutor acts as victim's representative on behalf of government; victim doesn't need a lawyer
- Victim may receive a subpoena (a requirement to testify in court; failure to appear may result in warrant for arrest)
- If the defendant is found guilty, a sentencing hearing will be set
- If the defendant is found not guilty, the defendant will be released and charges dismissed

## SENTENCE

- Jail
- Probation-possibly with home monitoring
- Fines & fees

## REVIEW HEARINGS

- To determine whether defendant is complying with terms of sentence or special plea agreement
- Violation of probation conditions may result in jail time or other penalties

<b>System-based advocates</b>
-------------------------------

### Court-based advocates

- Court-based advocates work for the government-usually the city or county
- Not all cities offer victim advocacy services
- Court-based advocates typically provide:
  - advocacy to victims of a dv-related crime as a criminal case proceeds through the legal system
  - basic dv and safety planning information
  - information about the criminal legal system
  - information about abuser's criminal case
  - coordination between victim and prosecution/court
  - court accompaniment
  - no guarantee of confidentiality
  - no services to victim-defendants

### Law Enforcement-based advocates

- Law enforcement-based advocates work for local police departments
- Not all police departments have victim advocacy services
- Some law enforcement-based advocates provide crisis assistance at the scene of the crime
- Law enforcement-based advocates typically provide:
  - advocacy as the criminal case proceeds through the legal system
  - info about the criminal legal system & about abuser's criminal case
  - coordination between victim and law-enforcement/prosecutors
  - basic dv and safety planning information
  - no guarantee of confidentiality
  - no services to victim-defendants

## **Crime Victims' Bill of Rights**

RCW 7.69.030 As a crime victim, survivor of a crime victim, or a witness to a crime, Washington State law provides that reasonable efforts be made to ensure the following rights:

1. To be provided with a written statement of the rights of crime victims, including the name, address, and telephone number of a county or local crime victim/witness program if one is available in your area.
2. To be informed of the final disposition of the case.
3. To be informed of changes in court dates to which you have been subpoenaed.
4. To receive protection from harm or threats of harm arising from cooperation with law enforcement and prosecution efforts.
5. To be informed of the procedure to be followed to apply for and receive any witness fees to which you are entitled.
6. To be provided, whenever practical, with a secure waiting area during court proceedings that does not require you to be in close proximity to defendants and family or friends of defendants.
7. To have any stolen or personal property returned as soon as possible after the completion of the case.
8. To be provided with appropriate employer intercession regarding absence from work for court appearances.
9. To be provided access to medical assistance without unreasonable delay.
10. To have, whenever possible, a victim advocate present to prosecutorial or defense interviews and at judicial proceedings.
11. To be present in court during trial, or if subpoenaed to testify, to be scheduled as early as practical in proceeding in order to be present during trial after testifying.
12. To be informed of the date, time and place of the sentencing hearing for a felony conviction upon request.
13. To submit a victim impact statement which shall be included in all pre-sentencing reports and permanently included in the offenders files and records.
14. To present a victim impact statement personally or by representation, at sentencing hearings for felony convictions.
15. To have restitution ordered when there is a felony conviction, even if the offender is incarcerated, unless extraordinary circumstances exist.
16. To present a statement in person, in writing, via/audio/video tape, or by presentation, at any hearing conducted regarding an application for pardon or commutation of sentence.

## Crime Victim's Compensation Program

### WHAT IS CRIME VICTIM'S COMPENSATION?

- It is a service offered by WA State Department of Labor & Industries
- It provides medical and financial benefits to crime victims

### WHO CAN GET HELP?

- Victims injured in a violent crime in Washington State
- Survivors of a homicide victim
- Washington residents injured by an act of terrorism in a foreign county

### BENEFITS ARE *NOT* AVAILABLE TO THOSE

- Injured while participating in a felony
- Injured while confined in jail, prison or institutionalized
- Who incited, provoked or consented to the crime
- Who are unwilling to provide reasonable cooperation to law enforcement

### BENEFITS AVAILABLE

- Payment of medical, dental and mental health counseling bills
- *Partial* payment of lost wages
- *Partial* payment of funeral costs
- Modification to vehicles/home to accommodate permanent injuries
- Limited pension payment if crime prevents permanent return to work
- Limited pension payment to spouse/child of deceased victim
- Counseling for family of sex assault & homicide victims
- Property losses not covered & benefit amounts are capped
- Victims are not required to pay for initial sexual assault medical exam
- Public and private insurance money must be exhausted first
- Money from insurance settlement or lawsuit will first go to Crime Victims Compensation for reimbursement

### WHAT VICTIMS MUST DO

- Notify police of crime within 1 year of crime
- Notify police within one year of when a report could have "reasonably" been made
- Get application to CVCP within 2 years of report
- Within 2 years of 18<sup>th</sup> birthday if minor at time of crime
- Within 5 years of report with good cause\*

### ROLE OF ADVOCATES

- If survivor's abuser is facing dv-related criminal charges (even if abuser has accepted a plea agreement) or has recently faced charges, let survivor know about CVCP
- Let survivors know they can get CVCP applications at EDVP or can directly contact the **Department of Labor & Industries: 1-800-762-3716**

## Frequently Asked Questions for Victims in DV-Related Criminal Cases

### Can I drop charges?

No. The prosecutor reviews the case and makes the final decision on whether to file criminal charges against the defendant. The prosecutor files charges against the defendant when he/she violates the laws of the State of Washington. You become a victim/witness and may be required to come to court and testify about the incident. If you do not appear, the prosecutor may request a material witness warrant to compel your appearance in court.

### What is a criminal No Contact Order?

This is an order issued in connection with a criminal case, stating that the defendant may not have any contact with you. If the defendant contacts you in any way, you can call **911** and show the police your copy of the No Contact Order. The defendant may be immediately arrested or issued a citation. Criminal charges must be pending for this type of order to be issued. If the criminal charges are dropped, the No Contact Order will also be dropped.

### What if I do not want a criminal No Contact Order?

If the court has issued a No Contact Order and you want it dropped, you must go to the District Court who issued the order and ask to schedule a Motion to Lift the Order. The judge may ask the prosecutor to take a position on your motion, and the prosecutor may or may not agree with you. The judge does not have to drop the order just because you make the request. If the order is not dropped, then the defendant must continue to avoid contact with you, or else face further penalties.

### How do I get a No Contact Order?

An order may have already been obtained for you by the prosecutor's Office. If you do not have an order to protect you and you are in fear of further injury, harassment, or contact from the defendant, call the prosecutor and request a No Contact Order. The prosecutor can then ask the judge to issue a No Contact Order in connection with the criminal case. No Contact Orders are free; there is no filing fee to obtain one.

### Is there another kind of order that can protect me?

Yes. There is an Order for Protection. This is an order which you can obtain even if no criminal charges are pending against your abuser. The police do not need to be involved. This order is free. This is an order that prohibits the abuser from contacting you and/or your children. Any courthouse can provide you with the paperwork to request an Order for Protection. Telephonic hearings to obtain an order may be arranged in special circumstances to accommodate the safety or confidentiality of the victim and/or children.

### What if the defendant's attorney attempts to contact me?

The defendant's attorney may contact you regarding the case. Although you are not under a legal duty to submit to an interview, it is customary for a defendant's attorney to speak with you prior to trial in order to prepare his or her case. You may ask the prosecutor or another support person to be present with you during your conversation with the defense attorney. If you choose to have the prosecutor present, please call and we will schedule the interview at your convenience.

Will I have to testify in court?

A subpoena is a court order requiring your presence at trial. If you received a subpoena with the date, time and place to come to court, you may have to testify. Talk to a community based advocate or court advocate (if available) for more information if you are worried about testifying in court. A prosecutor will explain options in the case and whether a trial or settlement (plea bargain) will occur. At trial, the prosecutor and the defense attorney will be asking questions about the incident. It is important to answer the questions truthfully, carefully and completely.

Can the defendant get counseling instead of jail time?

Yes, that is possible. Many first-time offenders are ordered to complete a certified Domestic Violence Perpetrator Treatment program if the defendant pleads guilty or is found guilty. Treatment may help an abuser stop violent behavior.

Do I need to come to the arraignment?

No. You may attend, but you are not required to be there. The arraignment is a court hearing where the defendant appears before the Judge and is informed of the charges. The defendant may enter a plea of guilty, and in some cases, may have the option of entering into a Stipulated Order of Continuance Counseling Program. Testimony and evidence are not presented on arraignment day. The Prosecutor's Office Legal Assistant can explain this process to you and communicate your special needs and concerns to the prosecutor.

Do I need a lawyer?

No. You are both the victim and a witness in the case. The prosecutor is not your personal attorney, but will work with you before, during, and after the trial in this criminal matter. You are free to retain your own attorney to advise you on legal issues if you wish.

Who should I call for help?

In an emergency, call 911. Contact the Community-Based Domestic Violence Program at their 24-hour crisis line if you need a safe place to stay, counseling, or referrals. Call 1-800-562-6025 (the statewide Domestic Violence Hotline) to find out the number of your local community-based domestic violence program. For questions about the investigation of your case, contact the police department who took the report. For questions about the prosecution of the case, contact the Prosecutor's Office.



<b>Role of community-based advocates when working with survivors involved in the criminal legal system</b>
--

- Give survivors a sense of what to expect and what not to expect from the police
- Reflect that police officers have a very demanding, risky job which requires them to make critical decisions often without a lot of time or without a lot of information
- Reflect that it is reasonable for survivors to expect the police and the legal system to treat them with respect and to prioritize survivor safety; prepare survivors for the possibility that they may encounter people who work in the system who are not as knowledgeable about dv as survivors would expect
- Discuss ways that survivors can advocate for themselves with police or legal system
- If survivors have feedback (either positive or negative) about a police officer, suggest that they (if they feel safe and comfortable doing so) give that feedback directly to the officer(s) involved and/or to the officer's supervisor.
- Let survivors know that if they have questions about their partner's criminal case, they can contact the court-based advocate assigned to the case (if there is one) and/or can contact the prosecutor's office directly.
- Explain how criminal cases proceed through the legal system
- Clarify that it is the government (via the prosecutor) who makes the decision to file (or "press) charges against a dv victim's partner. Survivors are not the ones who are responsible for "pressing charges" nor do they have the power to "drop charges"
- Explain what No Contact Orders are and how and when they are obtained
- Let survivors know how to report any violations of the NCO
- Compare and contrast NCO's to other protective orders
- Explain how survivors can request to have the NCO modified or dropped
- Safety plan around abuser getting out of jail
- Safety plan around abuser retaliating due to police or legal system involvement
- Describe the kinds of behaviors that abusers engage in & how they may be crimes

- Validate that most survivors do not intent to have their partners prosecuted, sent to jail or get arrested when they call 911. Most survivors merely want the dv to stop, to have someone intervene and to be safe.
- Validate and normalize that while many survivors view calling the police as an option, many do not feel comfortable or safe involving the police
- Validate and normalize that while many survivors cooperate with the prosecution, many do not feel comfortable or safe cooperating with the prosecution
- Explore the pros and cons of cooperating with the prosecution
- Talk about how abusers may become “system savvy”
- Let survivors know they have a right to call 911 if afraid, harassed or alarmed by their partner’s behavior; they do not have to prove that their partner is doing something illegal
- Explain what civil standbys are
- Clarify that, while most abusers do not face a lot of jail time, involving police/legal system can offer other benefits: may serve as a deterrent to the abuser, may limit abuser’s access to weapons, NCO may limit abuser’s contact with victim, criminal charges or conviction may assist survivor in requesting visitation restrictions in a later family law case, may help survivor be viewed in a more credible light (especially the case for victim-defendants or survivors involved with CPS), may make survivor eligible for crime victim’s compensation
- Describe the local options regarding special plea agreements
- Clarify that survivors do not have to be present at their partner’s criminal legal hearings unless called to testify at a trial

## Survivors arrested for or charged with DV crimes (“victim-defendants”)

### BACKGROUND

- Efforts in last 20 years to strengthen criminal legal system response to dv crimes has impacted the rate of survivors being arrested/charged with dv-related crimes
- The legal definition of DV is narrower from the behavioral definition of dv and focuses on one-time incidents of abuse; a one-time use of violence is not the same as battering
- Advocates are exploring ethical ways to support survivors who use violence as well as the difference between acts used to establish power and control vs. acts used to survive DV
- Abusers use illegal violence & threats as well as non-criminal forms of abuse

### KEY FINDINGS BY KING COUNTY COALITION AGAINST DV’S VICTIM-DEFENDANT REPORT

- Batterers & survivors tend to have different intent behind their use of force:
  - survivors’ objectives = self-defense, to respond proactively to protect themselves or to retaliate after long history of abuse.
  - abusers’ objectives = to control, intimidate and frighten partner.
- King county DV-related jail bookings for female inmates between 1990 and 2000 = 81% increase; bookings for male counterparts = 10% increase
- Batterers may be learning how to use the system to their advantage
- Survivors may appear to be the abusive one because of intoxication
- Survivors may appear to be the abusive one due to affect: angry, frustrated, uncooperative
- Survivors are much more likely to be honest about use of violence & accept blame
- Survivors’ injuries may be less noticeable
- Once arrested survivors are much less likely to call 911 again
- Victim-defendants often plead guilty
- Victim-defendants may later have difficulty maintaining custody of their children

### IMPLICATIONS OF CONVICTION: REDUCES ACCESS TO CRITICAL RESOURCES & RIGHTS

- Right to vote, serve on jury or hold public office
- Access to stereotypically feminine careers: childcare, social services, teaching, healthcare
- Right to vote, serve on jury or hold public office
- Access to public housing
- Welfare benefits
- Conviction of felony or gross misdemeanor can result in deportation

### ROLE OF ADVOCATES

- Acknowledge that many survivors use violence
- Clarify the difference between defending one’s self, pre-empting an attack, responding to an abuser’s controlling tactics vs. a pattern of battering
- Discuss use of violence, its impact and alternatives

- Inform survivors of dv laws, consequences of arrest, options if arrested
- Discuss pros/cons of pleading guilty vs. not guilty
- Discuss ways abusers use the system
- Ensure that survivors know about public defenders & how to access them
- Refer them to EDVP for a copy of KCCADV's Victim-Defendant Report

### Advocacy with individual "victim-defendants"

#### Arrest

- In cases where there is a follow-up investigation (felony), help the survivor to get information about self-defense and/or prior victimization to the investigating law enforcement agency.
- If the case is a misdemeanor, and the survivor has been arrested when acting in self-defense, she (or you) may contact the supervisor of the officer who made the arrest. Do not assume that the officer made a mistake.

#### When Formal Charges Are Filed

- Encourage the survivor to provide all relevant information to her defense attorney.
- Include medical records, police reports from previous incidents, and any other information that supports this history.
- DO NOT consult with the prosecutor before you first with the survivor's defense attorney.

#### Initial Appearance

- Before the No Contact Order is issued, make sure that it contains provisions for the survivor to go to her home, access her belongings, and see her children.
- Know that the batterer may have control of the survivor's money, credit cards, vehicle and temporary custody of the parties' children.
- The Court will generally allow for a "Civil Standby," so that the survivor (as defendant) can go into a shared residence to get what she needs.
- Present information to the judge about the survivor's victimization

#### Before Release From Jail

- Find ways to connect with/advocate for survivors who are in jail. Be sure you can accept collect calls from the jail (this is a technology AND policy issue).
- Help the survivor to locate housing and employment BEFORE she is released from jail. This can hasten her release and thereby reduce the pressure on her to plead guilty.
- Help the survivor find resources to meet bail. (Some agencies have established a bail fund for victim-defendants).
- Help the survivor to develop a safety plan for when she is released as the batterer may be increase his violence against her once she is released.
- Make sure that the survivor is aware of the VINE or SAVIN system and that the batterer (as well as friends and family) can be automatically notified of her release.

#### Arraignment

- Be familiar with the eligibility requirements to get a public defender so you can inform the survivor about these.

- Review with the survivor the pros and cons of pleading guilty. Defendants should never plead guilty before they have the chance to fully understand the implications of a guilty plea.

#### Plea Agreements

- Inform the survivor of the potential immediate and long-term consequences of a guilty plea.
- Help survivor evaluate the pros and cons of accepting vs. not accepting a plea agreement.

#### Trial

- Work with the survivor to provide some relevant information for the defense attorney on the dynamics of DV, and make sure s/he has access to all the information about the survivor's experience of abuse.
- Offer emotional support to the survivor during the trial!

#### Sentencing

- Help survivor to understand the pros and cons of different sanctions.
- Talk with the survivor and her defense attorney about the safety concerns and problems with specific sanctions. Make sure the defense attorney has enough information to articulate these to the judge.
- Be prepared to clearly articulate why specific sanctions may not be appropriate and may be unsafe for a victim-defendant:

#### Probation/Parole

- Encourage the survivor to tell her probation/parole officer that she is has been a victim of DV.
- If she wants your support with this, she can sign a release form that allows the probation/parole officer to talk with you.
- Understand that if you share information with the probation/parole officer it can NOT be kept confidential and goes into the court file.

### **Systems advocacy on behalf of “victim-defendants”**

#### Within Advocacy Programs:

- Re-evaluate agency policies that screen out survivors who have used violence
- Engage in open conversations about survivors' use of violence, its impacts, and alternatives
- Provide information to all survivors about the criminal legal system, the use of the legal system as a tactic of batterers, and the potential negative consequences if they are arrested
- Consider survivor's use of violence in safety planning, including consequences, options, and planning to avoid using violence
- Develop a policy regarding survivors mandated to your services.
- Provide training and opportunities for discussion for all staff about philosophical and practical issues related to more proactively discussing survivors use of violence
- Develop outreach materials that reflect understanding that survivors sometimes use violence

#### Within Criminal Legal System

- Understand each step in the legal process.
- Know the structure and roles of each area of the criminal legal system.

- Develop working relationships with people in each area: law enforcement, the jail, defense, prosecution, probation.
- Help staff of these agencies (especially defense) know how to identify victim-defendants and refer them to community-based DV agencies.
- Provide training to criminal justice personnel that is specific to their role
- Keep all survivors in mind when advocating for individual survivors
- Emphasize that we are not asking that women be treated different from men; we are asking the survivors of dv be treated differently than abusers

#### In Family Law System

- Train family law attorneys who serve survivors about survivor-defendant issues

## **Batterer intervention programs (BIP's)**

### DESCRIPTION OF BIP's

- BIP's in WA state must be certified by DSHS.
- BIP's offer group counseling sessions where “participants focus on understanding their pattern of abuse and learn that dv is not an isolated event”. BIP objectives are to teach abusers accountability for their actions, examine the beliefs that determine the choice to use abusive/controlling behavior with their intimate partners and develop beliefs to support implementing non-violent/non-controlling behaviors.
- For a minimum of six months, participants attend the groups weekly; after that they must attend the BIP groups at least once per month for six months.
- Training of BIP staff and focus/length of program is regulated by DSHS and the Washington State Administrative Code (WAC)
- Most participants are court-mandated to attend
- Statistics show that completion rate is higher for participants that attend voluntarily
- Sometimes called “batterer’s ‘treatment’” but from an advocacy perspective, the term “batterer’s intervention” is preferred as the term “intervention” reflects the understanding that battering is not a mental health problem nor an illness that can be cured by “treatment”.

### WHY ANGER MANAGEMENT IS NOT APPROPRIATE FOR ABUSERS

- Short term classes and less regulated
- Focus is on anger and appropriate ways to channel this emotion rather than on DV and the root causes DV—this focus may support an abuser’s belief that external issues cause the abusive behavior. Many people get angry and do not abuse their partners and many abusers are quite calm and calculating when battering
- Disproportionate focus on the individual and individualistic solutions
- Doesn’t incorporate information about the social forces that shape abusers and perpetuate DV
- Not appropriate for individuals who engage in ongoing abusive behavior

### WHY COUPLES COUNSELING/MARRIAGE COUNSELING IS NOT APPROPRIATE

- Allows abuser to focus on relationship problems & continue criticisms of survivor
- Shifts focus away from abuser; can avoid dealing with own abusive behavior
- May be physically unsafe to have survivor/abuser in same facility
- Abuser may retaliate physically and/or emotionally against survivor for what survivor says to the couples counseling therapist
- Counselors may not be knowledgeable about DV
- Counselor may collude with abuser—this can exacerbate survivor’s feelings of guilt/blame
- Implies that survivors are complicit in their own abuse; that DV is mutual
- May give survivors false hope. That by “working on their own (interpersonal or relationship) issues”, the DV will end.

- Disproportionate focus on the individual and individualistic solutions
- Doesn't incorporate info about social forces that shape abusers and perpetuate DV

#### CONCERNS ABOUT BIP'S

- Research does not indicate conclusively whether BIP's change battering behavior
- Survivors report abuse may stay the same or may worsen even when abusers complete BIP's
- Some survivors report that their abusive partners have learned new power and control tactics after attending BIP classes
- Legal system may be placing a growing emphasis on BIP's as the solution to DV by ordering abusers into BIP's in lieu of jail
- Survivors report that abusers are granted unsupervised visits or increased residential time with the children once abusers initiate attendance at BIP's
- Survivors cite infrequency/inconsistency of courts regarding abusers being sanctioned for poor attendance or for dropping out of BIP's
- Drop in arrest rates are often cited as evidence of BIP efficacy but reduced rates of crime does not necessarily mean that the DV is decreasing. It could just mean that batterers are getting more savvy about how to avoid arrest or are battering in ways that are abusive but not illegal.

#### ADVOCATE'S ROLE

- Reflect that often survivors tend to be overly optimistic about the efficacy BIP's or other forms of intervention
- Validate/normalize this optimism/hope as OK and normal rather than dysfunctional
- Discuss how DV:
  - Is a learned behavior and therefore, theoretically, can be unlearned
  - Is learned from a variety of sources/socializing forces—give examples
  - Is learned over a long period of time and therefore will likely take a long time to unlearn
- Differentiate between BIP's, anger management programs and couples counseling.
- Safety plan around likelihood that BIP attendance may not decrease abuse
- Safety plan around likelihood that BIP attendance may result in abuser switching power & control tactics or using knowledge of system and DV against survivor
- Let survivors know they have the right to give feedback to their partner's BIP provider and/or to their partner's probation officer
- Let survivors know that your program has more information about BIP's, where survivors can direct BIP feedback and info the WAC regulations regarding BIP's



## **Practical Strategies for Domestic Violence Advocates**

### **Working with Law Enforcement**

#### Ride-alongs:

Consider doing frequent ride-alongs with police officers. Ride-alongs allow advocates to learn more about police work and also provides an opportunity to discuss domestic violence issues in depth. However, it is important to be mindful of safety issues and being seen as a part of law enforcement by domestic violence victims.

#### Meet with your police chief or sheriff:

Explain your role with victims and discuss how to improve coordinated community response to domestic violence cases in your area. Ask for feedback from the law enforcement regarding their concerns in responding to domestic violence cases.

#### Contract with law enforcement:

Consider contracting with law enforcement to provide legal advocacy to domestic violence victims who are referred to you by the criminal justice system. This is different from law enforcement hiring their own victim witness coordinator to assist with case coordination and investigation. If law enforcement has a victim/witness coordinator, consider working with this person to send referrals to your agency.

#### Build relationships with law enforcement:

Invite law enforcement to attend your agency's trainings, social gatherings, and events, and attend the trainings and events put on by law enforcement. For example, hold a softball tournament with law enforcement to build relationships and a rapport with the officers.

#### Training with law enforcement:

Ask permission to make short presentations about domestic violence during roll call. Ask members of law enforcement to co-present with you at trainings for the community.

#### Feedback to law enforcement:

Give both positive and critical feedback to law enforcement in the form of letters and phone calls. Writing a letter to an officer and, chief or sheriff thanking them for handling a domestic violence case well, can be an effective way to advocate for systems change.

#### Law enforcement work groups:

Join work groups and committees facilitated by members of law enforcement to address domestic violence cases and systems change. Participate in organizing trainings or conferences put on by law enforcement.

#### Media projects:

Ask law enforcement to join you in radio, television, or newspaper interviews, in writing letters to the editor, or in developing public service announcements about domestic violence.

### Panels and forums:

Hold brown bag lunches, panels, or open forums with law enforcement to informally discuss some of the issues that both law enforcement and advocates are facing and how they can help each other.

## **Working with the Courts**

### Set up a court watch program:

Work in conjunction with court based advocates to keep tabs on how commissioners and judges handle domestic violence cases, or involve agency volunteers in developing court watch programs in your area.

### Letters to criminal justice system:

Write letters of complaint when things go wrong and thank you letters when particular cases are handled well.

### Brownbag lunches:

Set up informal meetings or brown bag lunches for prosecutors, commissioners, judges, and advocates to discuss specific issues.

### Supporting victims:

Help victims express their feelings and opinions to the courts by helping them to write letters, arrange for meetings with prosecutors, etc.

### Domestic violence trainings with Continuing Legal Education credits:

Set up domestic violence training for judges, commissioners, and attorneys in conjunction with a public interest law firm or other attorneys and offer free CLE's. It is often helpful to involve specific judges or attorneys as trainers for these events. In exchange for receiving free CLE's, ask the attorneys if they would commit to taking on one-two pro bono domestic violence cases. Also preface the trainings with an open house at your agency to introduce the participants to your agency.

### Strengthen court order petitions:

Attach police reports, copies of RCW's or WAC's, to petitions for court orders.

### Get involved with family law work groups:

Meet with family law attorneys to discuss the challenge they face in domestic violence cases and how advocates can support them.

### Training resources:

Be available as a training resource for the criminal justice system and public interest law firms addressing family law issues. Use the criminal justice system as a resource for your agency, as well.

### Build relationships:

Invite members of the criminal justice system to your agency's trainings, events, fund-raisers, and social gatherings. Mail your agency newsletters to these key people in the system.

### Volunteers:

Recruit members of the criminal justice system as volunteers for your agency and invite them to attend your volunteer trainings.

Meet with your prosecutor and or his chief criminal prosecutor

## **Working with the General Community**

### Agency literature:

Make sure that police stations, police patrol cars, courthouses, clerk's offices, and other systems are always stocked with your agency's brochures, educational literature, and business cards.

### Coordinated community response:

Join or form a task force with other community members and representatives from the criminal justice system to identify strategies for responding more effectively as a team to domestic violence cases. If your community has STOP Grant funding, invite this team to initiate the process.

### Strategize with other advocates:

Talk with advocates from other communities about strategies they find effective in systems advocacy.

### Community accountability teams:

Participate in Child Protection Teams and Fatality Review Committees in the community.

### Cross-training and referral:

Provide cross training with different systems such as CPS, hospitals/ER's, and DSHS and develop more formalized referral systems between your agency and key systems.

### Participation in your agency:

Invite key people involved in different systems to be members of your agency's Board of Directors or to participate in other committees and programs within your agency.

### Input on new programs:

Provide input on new criminal justice programs in your community that will affect domestic violence programs.

### Community outreach and involvement:

Make it known in the community that the victim agency is interested in being informed and will provide input on new community programs and efforts to address domestic violence issues.

Meet with Mayor or community council.

# Civil legal issues

## Protective orders-General info

### TYPES OF ORDERS

In WA state there are four main types of orders relevant to domestic violence survivors\*:

- ***NO CONTACT ORDER*** = ***CRIMINAL***
- *Protection Orders* = *civil*
  - *Domestic Violence Protection Order*
  - *Sexual Assault Protection Order*
  - *Vulnerable Adult Protection Order*
- *Restraining Order* = *civil*
- *Anti-Harassment Order* = *civil*

\*Survivors can have more than one kind of order at same time

### PROTECTIONS OFFERED

All protective orders prohibit the abuser from having any contact with the survivor either directly or indirectly or through third parties.

### FULL FAITH AND CREDIT

In other states, court orders have different names and provisions. There is a federal law called “Full Faith & Credit” making court orders valid across state lines, military & tribal reservations

### VIOLATIONS

- Violations of the different kinds of orders can be criminal offenses
- If abuser violates the order and enforcement is desired, survivors should call 911

### CIVIL ORDER DEFINITIONS

- Petitioner = person requesting the order (survivor)
- Respondent = person whom the order is against (abuser)

### SOLE RESPONSIBILITY

It is the respondent’s responsibility to refrain from violating the provisions of the order.

Petitioners are not supposed to be able to violate an order put in place to protect them from the respondent—the order is against the respondent, not the petitioner. However, in other states, survivors have been prosecuted after allegedly “inviting” or “aiding & abetting” the abuser to violate the order. In most cases charges have been successfully appealed. It is recommended that survivors exercise caution regarding contact with the abuser when there is a court order in place against the abuser.

### MUTUAL CIVIL ORDERS

Mutual orders are when the court puts an order in place against both parties. It tends to happen the most with protection orders and restraining orders. When laws on protective orders were

passed by the state legislature, the legislature made it clear that mutual orders were not recommended, however there are times when courts enter mutual orders anyway.

#### WHY MUTUAL ORDERS ARE DETRIMENTAL:

- deprive the original petitioner of due process
- label both parties as violent
- treat both as being equally at fault
- abusers may conclude that their violence is excusable or provoked
- stigmatize and confuse survivors
- make enforcement problematic for police and courts
- can be used against survivor in other legal proceedings (like custody)

#### WHAT SURVIVORS CAN DO WHEN MUTUAL *RESTRAINING* ORDERS ARE ENTERED:

It is common for courts (especially during divorce cases) to consider entering mutual restraining orders which contain both financial and physical restraints. The financial restraints may prohibit the parties from liquidating assets and/or may order the parties to maintain the financial status quo until the divorce is finalized, etc. These *financial* restraints are typically not considered to be problematic for dv survivors. It is the *physical* restraint provision of the restraining order which can create problems for dv survivors—these are the provisions which prohibit the parties from contacting each other or harming each other. If the abuser or the courts attempt to enter mutual restraining orders with financial and physical restraint provisions, the survivor has the right to contest the entry of any physical restraint provisions or can contest the entry of the restraining order in its entirety. It is recommended that survivors obtain legal advice from a family law attorney to get assistance in responding to or contesting mutual restraining orders.

#### WHAT SURVIVORS CAN DO WHEN MUTUAL *PROTECTION* ORDERS OR MUTUAL *ANTI-HARRASSMENT* ORDERS ARE ENTERED:

The survivor can attend the abuser's full order hearing. During the hearing, the survivor will be given an opportunity to respond to the abuser's request for a full protection order or anti-harassment order. The survivor can provide information about the abuse and can ask the court to vacate/dismiss the abuser's request for the protection order or anti-harassment order. If the order is entered anyway, the victim can appeal the decision by filing a Motion for Revision or a Motion for Reconsideration. It is recommended that survivors obtain legal advice and assistance for this appeal process.

## ROLE OF ADVOCATES

- Differentiate between the different kinds of protective orders
- Talk about the benefits and possible drawbacks of seeking a protective order
- Emphasize that protective orders are just one part of a survivor's overall safety plan
- Validate/normalize that many survivors choose to seek protective orders while others choose not to
- Describe the legitimate reasons survivors have for seeking or not seeking protective orders
- Safety plan around possible retaliation by abuser
- Assist survivors in determining which kind of order is available to them if they are requesting information about court orders.
- Assist survivors in determining which kind of order they have or which kind of order has been put in place against them (often survivors don't know). If it is unclear, let survivors know it may be to their advantage to:
  - *Find out for sure the exact kind of order(s) that is in place*
  - *Obtain a copy of the order & ensure their local police dept. has a copy*
  - *Try to use the correct name of the order when referring to it—especially if/when calling 911 to seek enforcement of the order*
- If there is a court order in place against the survivor, explain possible consequences of violating the order (e.g., jail time) and safety plan around the possibility that the abuser may try to set the survivor up to violate the order.
- If the survivor was denied a protection order or the court put in place mutual *protection* orders, explain the drawbacks of mutual orders. Inform survivor about the reconsideration/revision options.
- If there are mutual *restraining* orders in place, explain the drawbacks of mutual orders.
- Describe how and where survivors can obtain more information about protective orders, including how and where to obtain one.

## CRIMINAL NO CONTACT ORDERS

- It is not an order that survivor can just go to court and obtain
- It is requested by the prosecutor in a criminal case involving a dv crime
- Criminal charges must be filed against abuser before NCO can be issued
- Survivor doesn't have to fill out any forms, go to court nor file any legal action
- Doesn't cover kids unless kids were also victims of same crime
- It is generally served by court or police as defendant is usually present in court when it is issued. Typically the existence of the order is proof that it has been served.
- Abuser is served upon release from custody, during arraignment, during trial or sentencing
- NCO is usually kept in place until judge/prosecutor drops the order or until abuser's case is dismissed
- Survivors who do not want an NCO in place against their partners can notify the prosecutor's office of their *preference* at any point during their partner's criminal case, however, the decision whether to put in place, modify or drop the NCO is up to the prosecutor and the judge.
- Free

## PROTECTION ORDERS

- Special type of order available only to dv survivors who have experienced:
  - Physical harm, Bodily injury, Assault, Sexual assault, Stalking
  - OR the infliction of fear of imminent physical harm, bodily injury or assault
  - Bodily injury includes: physical pain, injury, illness or impairment of physical condition.
  - Stalking includes when abuser: intentionally and repeatedly harasses or follows the victim, when the victim is placed in fear that the stalker intends to injure the victim or the victim's property.
- Petitions can be filed by a "family or household member" who has been assaulted or fears dv from another "family or household member"
- The legal definition of a "family or household member" includes:
  - Spouses & former spouses
  - persons with a child/ren in common
  - adult persons related by blood or marriage
  - adult persons who presently reside together or who resided together in the past
  - persons 16 years of age or older, presently living together or have lived together in the past and who have, or had, a dating relationship
  - persons 16 years or older who have had a dating relationship
  - persons who have a legal/biological parent-child relationship.
- Survivor doesn't have to call police to get a protection order and past police involvement is not part of the criteria needed to obtain a protection order
- Survivors must apply for order within the county where they reside and can go to any court to do so.

- Standard of proof: petitioner must demonstrate by a “preponderance of the evidence” (more reason to believe the dv occurred than not to believe) that the court should issue a PO against the respondent
- Temporary PO’s can be obtained “ex-parte” (petition can be completed and filed without abuser being present in court). Abuser receives notice of order once she/he is served).
- If PO petition is granted by the court, it is considered “temporary” and lasts 2 weeks
- The PO is not valid until the abuser is personally served
- At the end of 2 weeks, petitioner & respondent are asked to appear in court for the “full order hearing”. This is respondent’s chance to respond to the dv allegations and ask that the order be dropped or modified. This is the petitioner’s opportunity to explain why the PO is needed, to request an extension or modification of the PO, and/or to describe any new domestic violence that has occurred.
- The temporary PO will be dropped after 2 weeks (at the full order hearing) if the petitioner doesn’t request extension or doesn’t show up for the full hearing
- If petitioner includes children in the PO, the full PO hearing will take place at superior court even if petitioner originally filed at another court
- Survivors can petition on behalf of themselves and kids.
- Survivors can also petition just for kids (must substantiate abuse of kids) & not themselves
- A protection order can:
  - Restrain the abuser from committing acts of domestic violence towards the petitioner and/or towards the petitioner’s minor children
  - Restrain the abuser from contacting the petitioner and/or the petitioner’s minor children either in person, by phone, mail, email or through a 3<sup>rd</sup> party. Petitioner can insert language into the order to create exceptions to the no contact provision when necessary. For example, the order specify that the abuser is allowed email contact but only to discuss finances.
  - Exclude the abuser from the petitioner’s residence, workplace, school, as well as the school or daycare of petitioner’s minor children
  - Restrain the abuser from coming within a specified distance to the petitioner and/or the petitioner’s minor children
  - Grant temporary custody (1 year maximum) of minor children to the petitioner and/or set up a temporary visitation schedule
  - Order the abuser to complete services including: batterer intervention program, chemical dependency treatment, mental health counseling, and/or parenting classes
  - Order the abuser to reimburse the petitioner for legal fees/costs associated with the PO
  - Order the abuser to surrender firearms
  - Order possession and use of “essential personal effects” and/or vehicle
  - Direct police to assist the petitioner or the respondent in safely retrieving essential personal effects (aka a “civil standby”). Examples of essential personal effects (must be listed on PO): clothing, cribs, bedding, documents, medications, personal hygiene items.



- To modify, survivors must go to court and file a motion for modification of the PO
- To terminate a temporary order, survivors can just not show up at the full order hearing or they can file a motion to terminate the temporary PO. To terminate a full PO, survivor must file a motion to terminate the PO.
- PO's do not include financial restraint provisions like Restraining orders can.
- Free

### ANTI-HARRASSMENT ORDERS

- Petitioners don't have to have a relationship with respondent.
- AHO's are most frequently obtained by people who are being stalked (see stalking info below) or harassed by someone with whom they don't have an intimate or familial relationship.
- Survivors can petition for an AHO themselves or on behalf of their minor children.
- Family members/friends/co-workers/new partners of the survivor can also petition for an AHO against the abuser.
- Can go to District or Superior court to file for order; protection order advocates are not available to assist AHO petitioners.
- AHO's cost approximately \$50
- The legal definition of "unlawful harassment" includes:
  - a knowing and willful "course of conduct"\* directed at the victim which seriously annoys, alarms or harasses the victim and which serves no legitimate or lawful purpose
  - AND the conduct would cause a reasonable person to suffer substantial emotional distress and actually causes substantial emotional distress to the victim.

\*A "course of conduct" includes a series of acts over a period of time (however short), with an on-going purpose.

- The AHO can:
  - Restrain the abuser from contacting the survivor
  - Restrain the abuser from keeping the survivor under surveillance
  - Require the abuser to stay a stated distance away from the survivor's home and workplace
- In determining whether the harassing acts are "legitimate or lawful", the court considers:
  - Whether the respondent is initiating contact or whether both parties are contacting each other
  - Whether the respondent has been clearly told by the victim to cease contact
  - Whether the respondent's behavior is alarming, annoying, or harassing the victim
  - Whether the respondent's actions interfere with the victim's privacy or creates an intimidating, hostile, or offensive living environment for the victim
- The AHO is not valid until respondent has been personally served
- The AHO does not provide the same restraints or protections as a DV Protection Order.
- The AHO does not provide any financial remedies

## RESTRAINING ORDERS (AKA “TEMPORARY ORDERS”)

- Obtained by survivor or survivor’s attorney on behalf of survivor
- Must be married or have child in common in order to be eligible
- Must go to Superior court and apply for order
- Must be obtained as part of another legal proceeding:
  - dissolution
  - legal separation
  - paternity establishment or proposed parenting plan
  - parenting plan modification
  - motion for temporary support/maintenance
- Filing those other legal proceedings cost money (divorce = \$120)
- Cost can be waived if survivor meets income threshold & completes a “fee waiver form”
- Can accompany a parenting plan and help to specify the kind of contact abuser can have with kids (e.g., supervised vs. unsupervised visits or no visits)
- Can require abuser to pay child support
- Can require abuser to pay spousal support
- Can require abuser to pay debts or other expenses
- Can make provisions giving survivor access to/use of property or make abuser return property
- Can require abuser to participate in a BIP, chemical dependency treatment and/or parenting classes.
- Can be done “ex-parte” (petition can be made without abuser being present in court. Abuser receives notice of order once served).
- The RO is not valid until the abuser has been personally served.
- It is recommended that survivors get family law legal advice prior to filing for an RO and/or have an attorney help them file for the RO as part of the rest of their family law legal action.

## SEXUAL ASSAULT PROTECTION ORDERS

- DV survivors who have been sexually assaulted by their abusers should not assume that a SA PO is better or more appropriate for their situation than a regular dv protection order. It is generally recommended that dv survivors obtain DV PO’s unless there is a compelling reason not to.
- Free
- The SA PO is not valid until the respondent has been personally served
- Available to victims of “nonconsensual sexual conduct or nonconsensual sexual penetration”; includes a single incidents
- “Nonconsensual sexual conduct” can include:
  - Any intentional or knowing touching or fondling of the genitals, anus, or breasts, directly or indirectly, including through clothing;
  - Any intentional or knowing touching or fondling of the genitals, anus, or breasts, directly or indirectly, including through clothing;

- Any intentional or knowing display of the genitals, anus, or breasts for the purposes of arousal or sexual gratification of the respondent;
- Any intentional or knowing touching or fondling of the genitals, anus, or breasts, directly or indirectly, including through clothing, that the petitioner is forced to perform by another person or the respondent;
- Any forced display of the petitioner's genitals, anus, or breasts for the purposes of arousal or sexual gratification of the respondent or others;
- Any intentional or knowing touching of the clothed or unclothed body of a child under the age of thirteen, if done for the purpose of sexual gratification or arousal of the respondent or others;
- Any coerced or forced touching or fondling by a child under the age of thirteen, directly or indirectly, including through clothing, of the genitals, anus, or breasts of the respondent or others.
- “Nonconsensual sexual penetration” includes:
  - any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person, including but not limited to cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.
- Survivors can file a petition on behalf of their minor child or just themselves
- Survivors must file a petition in the county where they reside
- Same court process as dv protection orders
- Petitioners must meet the same burden of proof as a dv protection order (there must be a “preponderance of the evidence”)
- Survivor doesn’t have to call police to get a SA PO and past police involvement is not part of the criteria needed to obtain a SA PO.
- When the parties are under the age of 18, the court can prohibit the abuser from coming to the petitioner’s school even if they share the same school.
- Survivors can petition for a SA PO even if they were intoxicated at the time of the assault and/or if they had limited consensual sexual contact with the abuser prior to the assault.
- Survivors can file for SA PO’s at any court but it is recommended that they contact the King County Sexual Assault Resource Center (KSARC) for assistance.

### VULNERABLE ADULT PROTECTION ORDERS

- Special type of order available only to “vulnerable adults” who have experienced:
  - Abandonment
  - OR Abuse
  - OR Financial exploitation
  - OR Neglect
  - OR Threats of abandonment, abuse financial exploitation, and/or neglect
- Petitions can be filed by a “vulnerable adult” or by a legal guardian of a “vulnerable adult”

- The legal definition of a “vulnerable adult” includes a person:
  - Who is 60 years of age or older who has the functional, mental, or physical inability to care for herself/himself
  - OR who is considered legally “incapacitated”
  - OR Who has a developmental disability
  - OR Who has been admitted to any facility
  - OR Who is receiving services from home health, hospice, or home care agencies licensed under the law OR is receiving services from an individual provider
- Petitioners must file their petition in the county where the “vulnerable adult” resides unless the vulnerable adult left for safety reasons. In that case, the petitioner can file their petition either in the county where the vulnerable adult resides or in the new county.
- Standard of proof: petitioner must demonstrate by a “preponderance of the evidence” (more reason to believe the abuse occurred than not to believe) that the court should issue a the Vulnerable Adult Protection Order
- Not free, but filing fee can be waived if petitioner is low income
- Temporary PO’s can be obtained “ex-parte” (petition can be completed and filed without abuser being present in court). Abuser receives notice of order once she/he is served).
- If VA PO petition is granted by the court, it is considered “temporary” and lasts 2 weeks
- The VA PO is not valid until the abuser is personally served
- At the end of 2 weeks, petitioner & respondent are asked to appear in court for the “full order hearing”. This is respondent’s chance to respond to the dv allegations and ask that the order be dropped or modified. This is the petitioner’s opportunity to explain why the VA PO is needed, to request an extension or modification of the VA PO, and/or to describe any new domestic violence that has occurred.
- The temporary VA PO will be dropped after 2 weeks (at the full order hearing) if the petitioner doesn’t request extension or doesn’t show up for the full hearing
- The VA PO can:
  - Restraining abuser from committing acts of abandonment, abuse, neglect, or financial exploitation
  - Exclude the abuser from petitioner's residence
  - Prohibit contact by abuser
  - Prohibiting abuser from coming within a specified distance of the petitioner
  - Requiring an accounting by abuser of the disposition of petitioner's income or other resources
  - Restrain the transfer of property for a specified period not exceeding ninety days
  - Require the abuser to pay the filing fee and/or other legal fees associated with the VA PO

## Full Faith & Credit

In 1999, Washington enacted full faith and credit for foreign protection orders. It will amend RCW 26.10.220, 26.26.138, 26.50.010, and 10.31.100; adding a new chapter to Title 26 RCW; and prescribing penalties. Full faith and credit for foreign protection orders took effect on July 25, 1999.

### 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, Nations, Tribes and Bands by enforcing their orders.
- ▷ Increases the ability of Tribal Courts and Washington courts to protect individuals who move or travel to those jurisdictions that have enacted full faith and credit.

### Legal Definitions RCW 26.52.010

**“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.

### Notes for Advocates

When victims of domestic violence are fleeing, moving or traveling to States or Nations and Tribes that have enacted full faith and credit, the benefits of their protective orders stay intact.

#### Maximizing Full Faith & Credit:

- ▷ If an advocate is in contact with a victim from another state or Nation or Tribe, advise her to bring at least two certified copies of any protective order with her. Ask her what city/county/reservation the issuing court is in and the court's phone number.
- ▷ If the victim has relocated to Washington or traveled off her reservation and does not have a certified copy of the protective order, the advocate should contact the Tribal or state court (or

a domestic violence advocate) in the other state or Tribe or Nation that has jurisdiction to obtain a certified copy.

- ▷ Advise the victim to keep a certified copy in her possession at all times.
- ▷ Inform the victim that Washington courts will enforce the foreign protective order if the responding officer is aware of it.
- ▷ The officer will be aware of the order if the victim shows the officer a certified copy or if the order is filed/registered.
- ▷ Filing a protective order requires a certified copy from the victim or a facsimile or electronic transmission from the agency that is in charge of maintaining protective orders for the foreign jurisdiction. To file with the state, go to a clerk of a Washington court.
- ▷ Filing is not required in Washington state. The victim may not want to file if it allows her abuser to track her. If the victim elects not to file, this increases the importance of keeping a certified copy in her immediate possession.
- ▷ Filing/registering is not limited to the jurisdiction that the victim resides. If the victim fears tracking by her abuser, she can file in another location.
- ▷ If you are in contact with a victim leaving Washington or traveling outside a reservation or Tribal jurisdiction, advise her to take certified copies of all her orders --Washington order and Tribal court order.

## Notes for Law Enforcement

Full faith and credit increases law enforcement's ability to protect and serve by authorizing police to enforce foreign protection orders.

*How will law enforcement know if a foreign protection order exists and the conditions of that order?*

- The police officer should ask the victim if she has a certified copy of the protective order. If she has a copy, the officer should ask to see it. If it is her last certified copy, the officer should **not** keep it.
- The officer should check the computer-based intelligence information system used in this state by law enforcement to list out-standing warrants. If the protective order has been filed, the officer should be able to access it.
- The officer can also check with the issuing court.
- Filing is not required in Washington state. The victim may not want to file if it allows her abuser to track her. If the victim elects not to file, this increases the importance of keeping a certified copy in her immediate possession.
- Filing/registering is not limited to the jurisdiction that the victim resides. If the victim fears tracking by her abuser, she can file in another location.

*Is law enforcement required to establish whether the order is valid?*

- No. There is a presumption that the order is valid. If the victim shows you a copy of the order, check to see if there is a raised seal or stamp with original signature. If it appears authentic, you are not required to question the order.

*Is there law enforcement immunity for wrongful arrest in WA Statutes?*

- Yes, provided that the officer was acting in good faith and without malice.

*What questions should the officer ask?*

- What state, city or county, Nation or Tribe is the issuing court located in? Other locations & crimes reported involving this batterer? Has the person under restraint ever been prosecuted for an order violation? If yes, where? Has the person under restraint received notice of this order or was he/she in court when it was issued?

### **Notes for Prosecutors**

Full faith and credit strengthens the prosecutor's power by granting them the authority to enforce foreign protection orders.

*When is a foreign protection order valid?*

- A foreign protection order is valid when the issuing jurisdiction had personal and subject matter jurisdiction and the person under the restraint was given reasonable notice and the opportunity to be heard.

*What are some practical steps that a prosecutor should take?*

- Before requesting a bail amount, check the defendant's prior history and contact the issuing jurisdiction for the specifics of the underlying case. Contact the issuing Tribal Court Judge for prior history.
- When preparing for trial, request the issuing state or Tribal court to provide a certified copy of the protective order and proof of service.
- If the prosecutor does not have access to the foreign jurisdiction's laws, request copies of applicable statutes from the foreign jurisdiction. Request copies of Tribal code from Tribal courts.

## Family Law Issues

### DIVORCE

- WA is a “no fault” divorce state; abuser doesn’t have to agree with divorce and survivors don’t have to prove infidelity or abuse in order to divorce
- Dissolution = divorce
- Dissolution takes a minimum of 90 days
- Decree of dissolution:
  - Divides property
  - Divides debts
  - Sets up parenting plan
  - Sets child support
  - May set spousal maintenance
  - May impose personal or property restraining orders/temporary orders
- A “contested” divorce is one in which one party challenges or disputes the other party’s petition and what it requested in that petition—most survivors experience contested divorces
- If uncontested, there are self-help resources to “do your own divorce”
- It is recommended that survivors get family law legal advice (and ideally legal representation) to help them with the divorce process even if they think their abusive partner won’t contest the divorce
- The more the abuser contests the divorce, the longer it takes
- If abuser is served and doesn’t respond by deadline, survivor may get dissolution with requested provisions by default. So it is helpful for survivors to ask for everything they want when they first file--especially if they think abuser won’t respond.

### LEGAL SEPARATION

- Not any easier nor cheaper than divorce
- Once legally separated abuser can ask for divorce and get it
- Takes approximately five months to change from legal separation to divorce
- Same as dissolution except still legally married to abuser and some financial protections
- Often used when parties do not want to get divorced for religious or other reasons
- Court has same power as it does in dissolution action regarding parenting plan, child support, maintenance, debts, property, restraining orders.

### ROLE OF PROTECTION ORDERS IN OBTAINING TEMPORARY CUSTODY

- Can grant survivor temporary custody of minor children
- Can prohibit abuser from removing kids from court’s jurisdiction
- Can stipulate that abuser have no visitation with minor children or at a minimum, supervised visitation
- Can stipulate by whom visits are supervised and where visitation exchange is to take place



- Can keep abuser out of the home or away from survivor/kids new home; can put survivor and kids back in home
- Can keep abuser away from kids' school, daycare, etc
- May help survivor in corroborating history of dv for survivor's future parenting plan petition

## PARENTING PLANS

- A parenting plan is a legal document which sets forth the basic arrangements for:
  - Where children will live
  - Who will make decisions for the children
  - How disputes about the parenting plan will be resolved
- In WA state, the court will enter a parenting plan as part of a dissolution, legal separation or parenting plan modification. It may also be used when parents have never married, but it is not required.
- In developing parenting plan, court considers:
  - Parents' parenting skills
  - Who has been taking care of kids
  - Parental conduct and effects on kids (drug use, dv, child abuse)
  - Recommendations by Family Court Services, GAL or parenting evaluator
  - Compatibility of kids with each parent
  - May ask kids over 13 their preference
  - Court must limit abuser's contact if judge finds that dv occurred. For example:
    - Willful abandonment
    - Refusal to perform parenting functions
    - Physical, sexual or pattern of emotional abuse of any children
    - History of dv, assault or sexual assault (uses RCW definition of dv)
    - Convicted as adult of a sex crime or found to be a sexual predator.
- Non custodial parents may be ordered to pay child support
- Abuser is still allowed to have visitation regardless of whether child support is paid

## PARENTING PLAN MODIFICATIONS

- Minor modification: don't have to show substantial changes in circumstances
- Minor modifications: no changes in custody
- Major modifications: change in custody
- Major modification: need an "adequate cause showing" & must demonstrate:
  - New facts
  - Old facts were unknown
  - Child is in danger
  - Substantial change in circumstances
  - Abuser has been in contempt 2x in past year, contempt relates to residential schedule and was done in "bad faith"

## WHEN ABUSER WON'T ABIDE BY PARENTING PLAN

- Survivor can make a motion for contempt
- Survivor can request a modification in the parenting plan
- Abuser can be fined for bringing groundless contempt motions

## PATERNITY & PARENTAGE ACTIONS

- In WA there are two ways for unmarried parents to establish the paternity of their children:
  - Through a court action called a parentage action
  - Filing a paternity acknowledgement aka paternity affidavit with the Dept. of Health
- Paternity must first be established in order to develop a parenting plan or residential schedule and to get an order for child support
  - Survivors may want to file for a parentage action if they want to:
  - Have the father of their child legally determined
  - Change the child's last name
  - Set child support or establish inheritance rights for their child
  - Have a residential schedule ("custody" and visitation) and/or decision making rights determined
  - Take their child out of the country
- A parenting plan or residential schedule is important if survivors fear the abuser will take their child or not return their child from a visit

## PATERNITY AFFIDAVIT (AKA PATERNITY ACKNOWLEDGEMENT)

- A paternity affidavit is not a court order; it is a sworn statement by the parents that the named father is the only possible father.
- A paternity affidavit on its own does not establish child support or residential time with the child. But having it is one step towards establishing both.
- A paternity affidavit creates a presumption of paternity. The father named in the paternity affidavit is considered to be the legal father of the child.
- If couple is married, husband is presumed to be legal father unless paternity affidavit exists
- If the couple is unmarried and the father is listed on the child's birth certificate, this may be sufficient for some purposes (e.g., child support) but it will not be enough for the court to determine "custody" or a residential schedule.
- Paternity can usually be established if mom and abuser signed a paternity affidavit at hospital or from child support enforcement.
- There are ways that fathers can rescind their signature on paternity affidavits but there are time limits to do so
- Once paternity affidavit is signed, the biological father can be changed only under extraordinary circumstances and it requires court action.
- If survivor needs/wants DNA testing, hospital can take sample from umbilical cord and use it right after birth; otherwise DNA testing is not done until child is 2 yrs old.

## PARENTAGE ACTION

- A parentage action is a court action to establish paternity, legal rights between the parents regarding the child, child support and a residential schedule/parenting plan.
- In WA parents have equal rights to residential placement until court order is in place
- If there is no “residential placement” order or parenting plan in effect, the police may not be able to help survivors regain custody should abuser kidnap kids
- If unmarried to abuser & abuser is father of child, survivors may want to initiate a parentage action.
- Parentage action can be initiated by the mom or by any man who thinks he is the father of the child
- If either of the parents are receiving welfare benefits, the state will file the action to collect child support.

## PARENTAGE ACTION PROCESS

- Either parent may file for a parentage action
- Either parent can contact DSHS’s Division Of Child Support for a referral to the county prosecutor’s office to find out if they can file the parentage action on behalf of the child. In some counties, parents can call or go to the prosecutor’s office directly to be screened to see if the prosecutor’s office can provide assistance. The prosecutor’s office represents the government, not the parents, but it will file the action and move the case through the necessary procedural steps.
- If the prosecutor’s office cannot file a case on behalf of the child, survivors can file court papers to petition on their own
- Abuser receives a summons which says a petition for custody and paternity has been filed and that abuser must respond if they disagree with petition.
- If abuser disagrees that he is the father, paternity must be proven. DNA or blood tests are usually ordered by the court.
- Case may go to trial if abuser disagrees. This can be 3-18 months.
- If abuser doesn’t respond, a default judgment will be granted.
- Court will decide:
  - Who is father & nature of contact with father
  - With whom child will live
  - Last name of child
  - Child support
  - If restraining order is needed
  - Residential schedule vs. parenting plan (residential schedule = doesn’t include decision-making authority/dispute resolution provisions)

## Family court services, GAL's, parenting evaluators & CASA volunteers

### WHO ARE THEY

- Family Court Services exist in some counties and are staffed by social workers— FCS workers may be assigned to divorce, paternity or DV cases where minor children are involved
- Guardians ad litem (GAL's) and parenting evaluators are appointed by the court and can be anyone that has met the required training:
  - Attorneys
  - Social workers
  - Psychologists
  - Community volunteer
- CASA = Court Appointed Special Advocates: volunteers that may be appointed by the court who have gone through a training provided by the CASA organization

### WHAT DO THEY DO?

- Evaluate circumstances and issues of concern in divorce, paternity and domestic violence cases when minor children are involved
- Make recommendations to court to about:
  - Which parent should have custody of the children
  - How much visitation the other parent should have
  - Whether either parent should be required to do certain things in order to be able to spend time with the kids:
    - Parenting classes
    - Chemical dependency treatment
    - Batterer Intervention Program
- CASA volunteers advocate on behalf of the children involved

### WHO PAYS FOR THIS SERVICE

- FCS related services may have nominal fees or fees based on parents' incomes
- Court may order one or both parties to pay for GAL/parenting evaluator fees.
- Regardless, GAL/parenting evaluator is supposed to represent kids' best interests

## Family Law- role of advocates

- Describe where to get family law info & court forms: [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org) and/or [www.courts.wa.gov](http://www.courts.wa.gov) or by calling **NW Women's Law Center** or by going to the **Family Law Facilitator's office** (if your county has one)
- Discuss dv stats regarding separation and violence/homicide
- Safety plan around separation and abuser's use (as well as potential future use) of power & control tactics related to custody and family law legal actions
- Discuss potential drawbacks of confronting abusers with plans to separate as this may give abuser a significant advantage. Abuser's frequently try to sabotage survivors' plans to separate or will retaliate by:
  - Hiring an attorney before survivor does
  - Liquidating/hiding assets, accounts or other income
  - Seeking a PO or RO against survivor
  - Possibly taking the children or putting an unfavorable parenting plan in place before survivor is able to legally respond
  - Destroying/hiding important belongings
  - Escalating the dv towards survivor or children or towards new partner
  - Lying to family/friends &/or further isolating survivor
- Prepare survivors for likelihood that dissolution or other family law legal actions may take months—especially if children are involved
- Prepare survivors for the likelihood that they will be representing themselves in their family law action(s)—most female survivors end up without attorney services
- Give information about free family law legal advice clinics
- Describe pro-se assistance and refer survivors to local and statewide legal aid resources
- If survivors can afford a lawyer, refer them to local family law attorneys who work effectively on behalf of survivors
- Discuss option of utilizing DV support group not just for peer support and safety planning during a difficult time but also to hear how other survivors are navigating the legal system during the separation/custody process
- Validate/normalize that separation can be very challenging & dangerous; many survivors choose not to separate for a variety of legitimate reasons
- Discuss how protection orders and/or restraining orders may help

- Explain to survivors the role of Family Court Services and GAL's if those are part of your local court's process
- Share the benefits of having parenting evaluators involved in family law cases:
  - Recommendations shared by the evaluators can reinforce the survivor's case
  - Parenting evaluators can be strong advocates for children
  - Their recommendations can be another voice for survivors & children
  - They can recommend that abusers attend BIP's or other services prior to having visits with the children
- Share the drawbacks of having parenting evaluators involved in family law cases:
  - Court tends to place a lot of weight on their recommendations
  - Not all have dv training; may make victim-blaming statements
  - There may be few mechanisms for feedback or little recourse if a survivor has concerns about their performance or their recommendations
  - Investigation can be intrusive

## Working with Attorneys

### BENEFITS OF HAVING AN ATTORNEY

- Attorneys are legal insiders and have knowledge about different legal options that may benefit survivors
- Attorneys can help clarify which strategies may be helpful and how to utilize them
- Attorneys can forewarn survivors about actions that may backfire
- Having an attorney can put survivor on a more level playing field in the legal system—especially if abuser has an attorney
- Attorneys can serve as an additional source of support to survivors
- The role of attorneys is to be an advocate for their clients
- Attorneys can prepare, review and help survivors make sense of their legal paperwork
- Unlike advocates, attorneys can give legal advice and can represent survivors in court
- Attorneys may have access to legal information or records that advocates or survivors cannot access or find difficult to access
- Attorneys can sometimes be present in court in place of survivor so survivor doesn't have to face abuser
- Information shared with an attorney is considered “privileged” communication; communication with an attorney may carry more legal protection in terms of confidentiality than communication with a DV advocate

### ISSUES FOR SURVIVORS TO CONSIDER WHEN WORKING WITH ATTORNEYS

- They can be very expensive
- Not all attorneys are knowledgeable about DV
- Many survivors report that their attorneys do not “get” DV and/or make victim-blaming statements
- Many survivors report that their attorneys are not aggressive enough and/or are not proactive enough
- While it is important for survivors to be able to trust, rely on and heed the advice of their attorneys, they will want to be prepared to advocate for themselves with their attorney, do a substantial amount of research about their legal issue and stay on top of what is happening in their case.

### ROLE OF ADVOCATES

- Let survivors know not all attorneys have experience with family law or DV.
- Prepare survivors for likelihood that they may end up representing themselves--Most survivors end up representing themselves in civil matters, especially family law
- Reflect that if survivors plan on hiring a private attorney, it is important to find a good one and to interview several attorney before hiring one.

- If a survivor is contemplating hiring a lawyer, explore whether it is necessary (e.g., sometimes victims think they have to have a lawyer for a criminal case when their abusive partner is being charged with a dv-related crime; victims don't need lawyers in these kinds of situations because the prosecutor represents them)
- If a survivor is contemplating hiring a lawyer, explore whether they can afford it.
- Clarify the difference between legal advocacy, legal advice and legal representation.
- Let survivors know that time with an attorney is limited and expensive; It is important to focus time with attorneys on getting legal advice.
- Inform survivors that attorneys set their own fees; most charge by hour—often the first half hour or consultation is free.
- Describe “Pro-Se” assistance or “unbundled legal services”. These are services for people without attorney representation. It is usually limited or one-time assistance on a flat-fee basis where people have to pay money up front. Pro-se attorneys can give legal advice and can review legal paperwork; sometimes they provide limited representation.
- Explain that attorneys have different areas of expertise and many will specialize in either civil or criminal matters--not both. If a survivor is involved in both a criminal legal case (as a defendant) and a family law case (e.g., is getting a divorce), the survivor will want to hire a criminal defense attorney and a family law attorney.
- Regardless of whether survivors are able to afford legal representation or not, describe services available at the Family Law Facilitator Program, if your county has one.



## ***Pro Se* or Unbundled Legal Services**

### DEFINITION

- *Pro Se* (pro say) is a Latin legal term used to describe a person who does not have a lawyer and who represents themselves in a legal action. You have a right to represent yourself in any kind of legal matter.
- Some attorneys are beginning to offer these *pro se* or “unbundled legal services” to people who are representing themselves.

### ISSUES FOR SURVIVORS TO CONSIDER

- This type of service means the lawyer will give legal advice and/or review or prepare documents, but will not be representing the client. Most lawyers will ask the client to pay the fee for this limited service up front.
- When a client calls for an appointment, they should make it clear to the lawyer that they are calling for this service. This is important so that clients receive the correct fee information and so that the attorney is prepared to give the client the limited service they requested at the appointment.
- There is a list of attorneys (who are from EDVP’s attorney referral list) that may provide *pro se* assistance to clients.
- Family Law Court Facilitators are also available to review forms for completeness but not content.

### ROLE OF ADVOCATES

- Prepare survivors for the likelihood that they will represent themselves at some point during their civil legal case.
- Explain that if survivors aren’t able to afford legal representation for the duration of their case, they may find it helpful to utilize both *pro-se* assistance and other free/low-cost legal services as the next-best option.
- Describe services available to survivors who are representing themselves:
  - Free legal advice clinics
  - *Pro-se* assistance
  - Family Law Facilitator’s Program
  - Self-help legal packets
- Refer survivors who are representing themselves in a family law legal action to CLEAR DV and CLEAR for further information, advice and referral.

## Parental kidnapping

### DEFINITION

- Also called “custodial interference”
- Illegal taking or unlawful retention (keeping) of a child by a parent

### WARNING SIGNS

- Abuser has threatened to take kids or get custody of kids
- Survivor is in process of separating or has recently separated
- Abuser has family/friends in another state or country
- Abuser recently moved and/or has a job elsewhere
- Abuser is a citizen of different country
- Abuser has history of frequent travel to other countries
- Abuser has control over or has hidden important documents

### WHAT SURVIVORS NEED TO KNOW

- If thinking about separating from partner, survivor may want to consider getting a protection order and/or filing for another family law legal action (like divorce or parentage action). Survivors can still separate and take the children but they may be safer legally with some kind of court order or family law legal action in place.
- If there is no court order, both parents have equal rights to residential time with the children
- Law enforcement may not help in locating/retrieving children if there is no court order in place
- Survivor may want to pursue the passport alert program
- If there is a court order or a parenting plan in place,
  - Give copies or order to schools, daycare, caregivers, bus drivers
  - Report kidnapping to 911
  - Contact US Passport agency
  - File motion for contempt
  - Contact attorney
  - Request that abuser only be granted supervised visitation or no visitation at all

### ROLE OF ADVOCATES

- Discuss ways to deter parental kidnapping:
  - Filing for protective orders
  - Developing a restrictive parenting plan with visitation limitations
  - Modifying parenting plan to limit abuser’s time with the children
  - Utilize supervised visitation center for abuser’s visits with children
  - Contact US Passport agency

- Retain children’s passports and other important documents
  - Ensure that children’s schools, daycare, caregivers and busdrivers have copies of court orders
  - Clear communication by survivor to family, friends, schools, etc. as to steps they need to take if abuser attempts to abduct children
  - Contemplate taking legal action or getting family law legal advice (contempt of court motion or parenting plan modification) if abuser is not abiding by parenting plan
- Safety plan with survivor around possibility of abuser kidnapping the children

<b>Lawsuits against abuser or against institutions</b>
--

#### WHY

- To get monetary compensation for the following:
  - Medical expenses
  - Moving costs
  - Physical pain
  - Mental pain
  - Stolen/destroyed property
  - Lost wages
  - Lost job opportunities
  - Other (locks changed, business phone number changed)

#### WHAT IT TAKES

- Have to file a civil legal action—most survivors hire a lawyer
- Have to meet deadlines
- Must demonstrate beyond a “preponderance of the evidence” that abuser or institution acted unlawfully and that these actions were harmful
  - Assault
  - Battery
  - False imprisonment
  - Emotional distress
  - Conversion of property
  - Interference with economic relations
  - Malicious harassment/VAWA

#### THINGS TO CONSIDER

- Safety
- Time
- Money/Attorney

- Effect on other civil proceedings (divorce, etc.)
- Effect of a criminal case—abuser’s past criminal conviction helps

#### WHAT WILL ASSIST SURVIVORS

- Photographs
- Medical reports
- Witnesses
- Journal (separate from personal journal)
- Copies of all expenses
- Lawyer

#### ROLE OF ADVOCATES

- Let survivors know about the option of filing a civil lawsuit against their batterer and/or against any institution whom they feel did not adequately protect them or their children
- Discuss the benefits and drawbacks of filing a civil lawsuit
- Suggest that survivors consult with an attorney to get more information; a good source for attorney referrals would be NW Women’s Law Center: **206-621-7691**

#### **Interpreters**

The court is required to provide interpreters for non-English speakers for most court proceedings. For court hearings where the person is summoned or compelled to attend (like a witness or for a criminal proceeding), or in cases where the non-English speaker is indigent, the government must pay for the interpreter. Prosecutors and police have to provide interpreters for investigations. RCW 2.43.040

The court is required to provide interpreters for speech impaired, hard of hearing, Deaf, and deaf blind persons who are a party or witness to any court proceeding. Prosecutors and police have to provide interpreters for investigations. RCW 2.42.120 (1-6)

## Immigration information

### PROVIDE IMMIGRATION RELATED REFERRALS

- **Northwest Immigrant Rights Project:** 206-587-4009 or 800-445-5771

Provides immigration-related legal advice and representation with immigration attorneys and/or legal advocates. Survivors can self-refer by calling to get information over the phone or to schedule an in-person appointment.

### BASIC IMMIGRATION ACRONYMS:

ICE	=	Immigration & Customs Enforcement (formerly known as INS)
LPR	=	Legal Permanent Resident, someone with the right to live permanently in the United States. A green card holder.
USC	=	United States Citizen, someone not subject to immigration law, typically someone born in the US, or someone who has gone through the naturalization process
VISA	=	Permission to enter the US for a particular purpose, including work, studying or tourism.

### CONVEY TO IMMIGRANT SURVIVORS IMMIGRATION BASICS

- Don't assume survivors know their immigration status. Some survivors think they lack legal immigration status when they actually have it; some think they have status when they don't. Many are confused about what status they have.
- Never send survivors to ICE for legal advice or for help with their immigration status (ICE may try to deport survivors rather than help them).
- Encourage survivors to talk with an immigration law attorney for immigration-related legal advice and especially before traveling outside the United States.
- Never send survivors to a public benefits agency (like DSHS/CSO/Welfare office) before checking to make sure:
  - They won't report survivors to ICE
  - They understand why survivors or their children are eligible to receive benefits
- Tell survivors there MAY (but don't guarantee) be ways to regularize their immigration status without the help of their abuser, including most common option, the I-360 Self-Petition.

- Tell survivors (whether undocumented or documented) that their immigration status is legally irrelevant in order to obtain:
  - Protection orders
  - Help from police and/or the right to expect that criminal charges could be filed against abuser if probable cause is established
  - Emergency Medical Care
  - Shelter
  - Child Custody
  - Child Support
  
- Tell survivors that *everyone* has the right to do the following things if stopped or jailed by ICE, whether they have immigration status or not:
  - Refuse to say anything before speaking to an attorney (carry the number of an immigration attorney or Northwest Immigrant Rights Project).
  - Refuse to sign anything before speaking to an attorney (survivors could potentially sign something that allows ICE to deport them without a hearing before an immigration judge)
  
- Tell survivors that if they are detained or put in jail, they can:
  - Demand a hearing with an immigration judge—there they can ask to be let out of jail and can file applications for immigration status.

#### DESCRIBE IMMIGRATION-RELATED PROVISIONS OF PO’S & RO’S:

- A protection order can assist in establishing a legal finding of domestic violence. This MAY assist survivors in later regularizing their legal immigration status.
  
- A protection order or “discovery” MAY help a survivor obtain needed belongings or evidence which could assist in establishing legal immigration status; here are some items to request:
  - Marriage/birth certificates
  - Wedding/family pictures
  - Love letters
  - Copies of joint leases/utility bills
  - Police, medical, court documents about the relationship
  - Copy of abuser’s green card or passport
  - School/medical/employment records
  - Social security number information
  - Letters/other mail addressed to both survivor and abuser at same address
  
- Through a PO or an RO, economic provisions can be requested. For an RO it is suggested that survivors first get advice from a family law attorney:
  - Maintenance of medical, car, home or rental insurance
  - Maintenance of rent, mortgage, utility payments
  - Child support and/or spousal maintenance

- Order abuser to turn over income tax statements and/or order abuser to give survivor part of the tax return money
- Survivor may be awarded the right to claim children as tax exemptions
- Through the PO, provisions can be requested that address survivors' immigration needs:
  - "Respondent shall sign ICE FOIA request"
  - "Respondent shall pay costs of petitioner's immigration case"
  - "Respondent shall turn over to petitioner information, documents or copies of documents"
  - "Respondent shall cooperate in and not withdraw any case she/he has filed for petitioner with ICE"
  - "Respondent shall not revoke immigration visas on behalf of their spouses or children"
  - "Respondent shall obtain prior court approval before contacting any government agency concerning the petitioner except 911 in an emergency"
- Through the PO, provisions can be requested that MAY deter parental kidnapping:
  - "Respondent shall not remove the children from the court's jurisdiction"
  - "Respondent shall turn over the children's passports"
  - "Respondent shall sign statement that no visa or passport should be issued to the children absent a court order"
  - "Respondent shall get supervised visitation only"

VALIDATE AND NORMALIZE THE COMMON BARRIERS AND FEARS FACED BY IMMIGRANT SURVIVORS:

- Fear of deportation
- English as a second language
- Difficulty accessing social services/legal remedies
- Misinformation about the US legal system
- Fear of being ostracized
- Economic survival
- Fear of being homeless
- Fear of losing custody of children or abuser kidnapping children

VALIDATE AND NORMALIZE THE COMMON TACTICS USED BY ABUSERS WHICH MAY DISPROPORTIONATELY IMPACT IMMIGRANT SURVIVORS:

- Fear of deportation
- Parental kidnapping threats by abuser
- Abuser threatening to get survivor in trouble with the law
- Abuser lying about survivors legal rights
- Isolation
- Economic abuse
- Abuser hiding or destroying important paperwork
- Abuser using legal system to obtain custody of children

## Confidential identity issues

### ADDRESS CONFIDENTIALITY PROGRAM (ACP)

- Administered by WA State Secretary of State's office
- Survivors must enroll through a DV program
- Applying to ACP and receiving the new ACP address takes approximately 2 weeks
- Survivors need to live or be about to live at residence unknown to abuser
- ACP provides a substitute address for survivor; mail goes to ACP PO box, then is forwarded to survivor's residence—ACP only forwards first class mail
- It takes less than a month to get registered in ACP but it isn't an overnight process
- ACP address must be accepted by WA State & local government agencies & applies to:
  - marriage records
  - driver's licenses
  - voting records
  - public school records
- Doesn't apply to federal government agencies or private businesses
- ACP serves as survivor's agent of service; courts generally will accept ACP address
- In some situations, courts and/or law enforcement can require ACP to reveal survivor's actual address

### UNSEALED NAME CHANGE

- Survivors wanting an unsealed name change are advised to do it before entering ACP
- Drawbacks are that the name change is public record
- Can be done as part of divorce/marriage proceedings or by court order (just go to court, fill out forms & attend hearing)

### SEALED NAME CHANGE

- Benefits are that the name change isn't public record
- To be the most successful, survivors:
  - need to change their SS# immediately afterwards
  - should ideally have complete custody of their children and need to be able to change the children's names and SS#'s as well
  - survivors must have no pending legal cases
- Sealed name change can pose many challenges for immigrant survivors
- Completion of a sealed name change may result in survivor not being able to prove that she is a US citizen or legal permanent record without linking her old name and new name
- Other drawbacks may include:
  - having to give up work/credit/personal references
  - not being able to use educational degrees earned in the past
  - being unable to use kids' past medical or school records



- File petition in Superior court—clerks likely will not give petitioners the actual sealed name change forms until the survivor has worked with a community-based advocate who is trained on sealed name changes

#### SOCIAL SECURITY NUMBER CHANGE

- Takes approximately 3 months or longer
- Social Security benefits will not be lost
- May want to apply in different state as first three numbers are coded by area
- Application process includes completing an application, claimant statement & interview
- Survivors need to have a lot of documentation about the DV
- Apply at local Social Security Administration office
- In order to change kids' SS#'s, survivors may need to have custody of kids

#### ROLE OF ADVOCATES

- Explain that confidential identity change options for survivors don't happen quickly, don't guarantee safety and aren't like the movies or the witness protection program
- Explain that survivors must be vigilant about releasing identifying info even after using these options

## APS & CPS

### TERMS

- APS = Adult Protective Services
- CPS = Child Protective Services
- Both are programs of WA State DSHS (Dept. of Social and Health Services)

### CPS

Investigates reports of child abuse and neglect for children under the age of 18. CPS social workers investigate appropriate referrals to assess the safety and protection needs of children and, when necessary, intervenes by providing services designed to increase safety and protect children from further harm. If CPS finds it necessary to remain involved with families beyond 90 days, the worker must obtain either a court order or a voluntary service agreement with families. CPS may provide in-home protective services to keep a child safely in the family home or provide temporary out-of-home care during assessment or reunification efforts. If risk warrants ongoing placements, dependencies must be established in court and cases are prepared for transfer to ongoing child welfare services.

### APS

Investigates allegations of abuse, neglect, abandonment and financial exploitation. Based on the outcome of an investigation, APS may offer legal or social protective services. An adult maintains the right to refuse protective services. The vulnerable adult or the legal representative must give written consent for protective services and may end the services at any time. APS conducts an investigation at no charge and without regard to the income of the alleged victim. Some protective services may be provided without cost.

### WHEN TO REPORT TO CPS

- “Reasonable cause to believe that a child has suffered abuse or neglect” one “shall report such incident or cause a report to be made” to law enforcement **or** to CPS

### WHEN TO REPORT TO APS

- “Reasonable cause to believe that abandonment, abuse, financial exploitation or neglect of a vulnerable adult has occurred” must report to APS
- “Reason to suspect that sexual or physical assault has occurred” must report to law enforcement **and** APS

### DEFINITION OF A “VULNERABLE ADULT”

- Person 60 years or older
- Has functional, mental or physical inability to care for self OR
- Found incapacitated OR
- Has RCW defined developmental disability OR
- Admitted to any facility OR
- Receiving services from certain home health, hospice or home care agencies

## ROLE OF ADVOCATES

- Explain that, as a general rule, we aim to keep info shared by survivors as private as possible but that due to WA state law, we are mandated to report info survivors share about child/vulnerable adult abuse
- Notify survivors of your status as a mandated reporter ASAP and how this may impact them. This way, survivors can choose how much info about the abuse or how much identifying info about themselves they want to share with advocate
- Discuss ways CPS/APS can be a support to survivors as well as how their involvement may not be a support to survivor
- Discuss pros/cons of the survivor making a voluntary report to CPS or APS
- Safety plan around voluntary or involuntary reporting
- Notify survivors before end of call if report is going to be made
- Let survivors know they can contact CPS/APS to make a supplemental report
- Mandated reporters must make their report within 48 hours
- Failure to report is a gross misdemeanor
- You do not need proof that harm has occurred to make a report. A person who makes a report in good faith is supposed to be immune from liability
- If in doubt, check with a supervisor
- Let survivors know they may want to document every time they talk with their CPS worker, what they think the worker said and then restate that to the worker so they have a clear understanding of what the worker said. They may also want to document every time they call CPS. If their calls aren't returned within several days, they should try the supervisor or regional manager.
- Provide handouts with tips on working with CPS, what survivor's rights are when working with CPS, and contact info for CPS so survivors can make their own report to CPS.
- Let survivors know they can get more information about their rights when working with CPS at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org) or by contacting **Northwest Women's Law Center at 206-621-7691**

- Refer survivors to the **Office of the Children & Family Ombudsman 1-800-571-7321** if they have a grievance with CPS which hasn't been resolved to their satisfaction by their CPS worker, CPS supervisor or CPS regional manager.
- **CPS = 1-800-609-8764**
- **APS = 1-866-323-4276 (main) or 1-800-422-3263 (statewide) or 1-800-221-4909 (to report abuse in King County)**

## DSHS Public Assistance

### TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF)

- A program of DSHS which provides temporary cash and medical help to families in need.
- Most families are required to participate in the Workfirst program as a condition of receiving assistance
- To receive benefits one must:
  - be a WA state resident
  - be responsible for the care of children or be pregnant
  - meet income, resource, citizenship and/or “alien status” requirements
- If approved for TANF, benefits are based on family size and income
- A family of three with no income gets a monthly TANF grant of approximately \$546
- When a household member starts working, DSHS counts half of the gross earnings against the grant; if they start receiving unemployment or another type of unearned income (like child support), the entire amount is counted against the grant
- To be eligible for TANF, family resources (e.g., checking & savings accounts, stocks, bonds, mutual funds or vehicle equity over \$5000) must be \$1000 or less
- As of August 1997, some TANF families are limited to 60 months of benefits in their lifetime
- Applicants need to apply at their local Community Service Office (CSO)

### WORKFIRST

- The Workfirst program expects that participants will:
  - Attend all appointments and complete all requested reviews
  - Participate in all required job search and work preparation activities
- Workfirst may assist participants with some of the expenses of getting and keeping a job, including:
  - Work clothing
  - Transportation
  - Educational expenses
  - Vehicle repair
  - Tools and equipment
  - Relocation expenses
- Funding for these supportive services can be up to \$3000/year
- Participants may still be eligible for support services for up to 12 months after their TANF benefits have stopped.

### FAMILY VIOLENCE OPTION (FVO)

- FVO provides some protections to dv survivors by allowing DSHS caseworkers to waive or defer some TANF & Workfirst requirements to ensure survivors’ safety.

## WHAT DSHS MUST DO

- DSHS must screen all applicants for dv
- If applicant identifies as survivor & meets DSHS DV definition, DSHS must notify survivor of FVO verbally and in writing. Survivor can disclose DV at any time & utilize benefits of FVO
- DSHS must maintain confidentiality:
  - Can only use DV info to make referrals or determine eligibility for deferrals
  - Should not release DV info (including name/addresses) to any outside parties or government agencies without survivor's consent unless required by law
- DSHS must refer DV survivors to supportive services

## WHICH WORKFIRST REQUIREMENTS MIGHT BE WAIVED OR DEFERRED?

- Participation in “work activities”
- Cooperation with the Division of Child Support --survivors can request a “good cause” exemption if they feel it is unsafe for DCS to try to seek child support from the abuser.
- Any requirements that would:
  - Make it more difficult to escape dv
  - Unfairly penalize survivors
  - Place survivors at further risk of dv
- The existing 5 year time limit on TANF

## ROLE OF ADVOCATES

- If survivors feel guilty about the prospect of accessing benefits, let them know that the majority of people receiving welfare benefits are women & children, that approximately half or more welfare recipients have identified as being DV survivors, and a significant number of recipients identified DV as the reason for needing welfare benefits
- Remind survivors that public benefits were partly subsidized by their tax dollars and are intended to be used at a time of need. Survivors can think about public benefits as a loan that they can pay back when they aren't in crisis
- Ensure that survivors know what a valuable and unique resource DSHS is. DSHS is the largest source of financial assistance in the state.
- Ensure that survivors know about financial assistance through DSHS—survivors can contact DSHS to see if they would be eligible for benefits.
- Let survivors know that even if they don't qualify for TANF or even if they need more than TANF, they may be eligible for other forms of assistance:
  - Food assistance
  - Medical/dental coverage
  - AREN grant (once/year lump sum of money that can be used towards emergency housing or utility expenses)
  - Assistance for persons with disabilities

- Assistance for seniors
  - Assistance with phone bill or utilities
- If survivors encounter a challenging DSHS caseworker or any other difficulties at DSHS, encourage them to contact you.
- Let survivors know if your program has an advocate outstationed at your local welfare office.
- Inform survivors about the option of requesting a “fair hearing” if their benefits are denied, delayed, insufficient and/or if they haven’t been able to access “good cause” or FYO exemptions/deferrals—many survivors have success at the “fair hearings”
- Refer survivors to [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org) for self-help legal packets on their rights when working with DSHS
- Refer survivors to [www.dshs.wa.gov](http://www.dshs.wa.gov) for more information about DSHS services

## Employment Issues

### IF A SURVIVOR IS FIRED OR “VOLUNTARILY” QUILTS

- It is illegal to be fired solely due to being a survivor of DV
- DV survivors are protected in taking leave from work to address domestic violence issues
- Can be fired for poor performance, missing work, being late
- Wrongful discharge laws and laws protecting employees who miss work to testify in court may also protect survivors
- Survivors who had to quit work because of DV can apply for unemployment insurance
- If fired & DV was related to work performance survivors can apply for unemployment compensation
- If denied unemployment compensation, survivors can appeal

### TIPS FOR DEMONSTRATING IMPACT OF DV ON EMPLOYMENT

- Document harassing phone calls, interference with ability to get to work, frequency of being followed, frequency abuser comes into worksite
- Get witness statements
- If safe\*, disclose dv to employer (\*employers may or may not be supportive or helpful to survivors who disclose dv)
- Try to make efforts to preserve employment (use Employee Assistance Program-EAP services, take an approved leave of absence, switch worksites)

### OTHER FORMS OF ASSISTANCE

- If incapacitated and unable to work as a result of DV, survivors may be entitled to Family and Medical Leave.
- For situations of workplace harassment/discrimination based on age, disability, gender, race, religion or sexual orientation contact the EEOC or Equal Employment Opportunity Commission.

### ROLE OF ADVOCATES

- Discuss safety in the workplace and traveling to/from workplace with survivors
- Discuss stalking and dv—abusers frequently target survivors at their place of employment and/or try to sabotage survivors’ employability
- Let survivors know that one of the leading causes of death in the workplace for women is murder by a current or former intimate partner
- Provide information to survivors about employment protections
- Refer survivors to [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org) for self-help packets on employment law
- Refer survivors to:
  - Unemployment Law Project: [www.unemploymentlawproject.org](http://www.unemploymentlawproject.org)
  - WA State Human Rights Commission (enforces unemployment laws)  
= 1-800-605-7324



## Housing Issues

### TENANT RIGHTS

- A landlord CANNOT legally terminate a survivor's lease, refuse to renew their lease, evict them, or refuse to rent to them just because they are a victim of domestic violence, sexual assault, and/or stalking. The landlord can end their tenancy or evict them for other lawful reasons, such as failure to pay rent.
- If survivors believe they are being discriminated against by a landlord because they are dv survivors, they may be entitled to financial compensation from the landlord.
- Survivors can legally break their lease, move out without having to pay for the remaining time on their lease (but they still have to pay the rent due for the month in which they leave) and get a refund of their deposit if they meet the following 3 criteria:
  1. Survivor has a valid protection order **or** has a record of reporting the incident of dv, stalking and/or sexual assault to a "qualified third party"--A "qualified third party" means any of the following people: law enforcement officers, state court employees, doctors, nurses and other health care professionals, licensed mental health professionals or counselors, members of the clergy, or crime victim/witness program advocates (dv advocates count too).
  2. Notify landlord in writing that they are a victim of domestic violence, sexual assault, or stalking and attach a copy of the valid order for protection or the record of the report to a qualified third party.
    - If they are attaching a Record of Report form, they must make sure that the "qualified third party" they reported to has a copy of the form that includes the abuser's name. The copy they provide to the landlord does not have to include the name of the abuser unless they feel comfortable doing so.
  3. Inform landlord that they will be moving out within 90 days of the incident--this is NOT 90 days from the day they reported the incident or received the order for protection. It is 90 days from the date the incident occurred.
- If survivors have a valid court order which excludes the abuser from the home but the abuser shares the lease, the survivor can still ask the landlord to change the locks at the survivor's expense. The landlord must change the locks if presented with a copy of the court order and must not give copies of keys to the abuser.
- If in public housing/Section 8; survivors should be able to relocate to another Section 8 approved apartment and still use their Section 8 voucher—this is termed "portability"

## ROLE OF ADVOCATES

- Give info about how to terminate a lease or rental agreement. Recommend an in person appointment with an advocate to get assistance with the lease-breaking process.
- Let survivors know that they are not required to inform their landlord that they are survivors of DV and do not have to inform them of the existence of a protective order if they are attempting to find a rental unit or once they have rented a unit.
- Refer survivors to [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org) for packets on tenant law
- Refer survivors to local Tenant's Unions and other housing advocacy organizations for info about tenant rights & for legal assistance

## **RCWs, WACs, GRs to know and love**

REVISED CODE OF WASHINGTON

<http://www.leg.wa.gov/rcw/index.cfm>

### **INTERPRETERS IN LEGAL PROCEEDINGS**

Chapter 2.42 RCW

- 2.42.010 Legislative declaration – Intent.
- 2.42.050 Oath.
- 2.42.110 Definitions.
- 2.42.120 Appointment of interpreter -- Responsibility for compensation--Reimbursement.
- 2.42.130 Source of interpreters, qualifications.
- 2.42.140 Intermediary interpreter, when.
- 2.42.150 Waiver of right to interpreter.
- 2.42.160 Privileged communication.
- 2.42.170 Fee.
- 2.42.180 Visual recording of testimony.

### **INTERPRETERS FOR NON-ENGLISH-SPEAKING PERSONS**

Chapter 2.43 RCW

- 2.43.010 Legislative intent.
- 2.43.020 Definitions.
- 2.43.030 Appointment of interpreter.
- 2.43.040 Fees and expenses -- Cost of providing interpreter -- Reimbursement.
- 2.43.050 Oath.
- 2.43.060 Waiver of right to interpreter.
- 2.43.070 Testing, certification of interpreters.
- 2.43.080 Code of ethics.
- 2.43.090 Language assistance plan -- Required for each trial court--Submission of plan to interpreter commission--Report.

### **WITNESSES -- COMPETENCY**

Chapter 5.60 RCW

- 5.60.060 -- Who are disqualified — Privileged communications.

### **VICTIMS OF CRIME – COMPENSATION, ASSISTANCE**

Chapter 7.68 RCW

- 7.68.010 Intent
- 7.68.020 Definitions
- 7.68.060 Application for benefits – Accrual of rights
- 7.68.070 Benefits – Right to and amount – Limitations

## **CRIME VICTIMS, SURVIVORS, and WITNESSES**

### Chapter 7.69 RCW

- 7.69.010 Intent
- 7.69.020 Definitions
- 7.69.030 Rights of victims, survivors, and witnesses
- 7.69.040 Representation of incapacitated or incompetent victims
- 7.69.050 Construction of chapter – Other remedies or defenses

## **FIREARMS**

### Chapter 9.41 RCW

- 9.41.010 Terms defined
- 9.41.040 Unlawful possession of firearms – Ownership, possession by certain persons
- 9.41.047 Restoration of possession rights
- 9.41.800 Surrender of weapons or licenses – Prohibition on future possession or licensing
- 9.41.810 Penalty

## **HOMICIDE**

### Chapter 9A.32 RCW

- [9A.32.010](#) Homicide defined
- [9A.32.020](#) Premeditation -- Limitations
- [9A.32.010](#) Homicide defined
- [9A.32.020](#) Premeditation -- Limitations
- [9A.32.030](#) Murder in the first degree
- 9A.32.040 Murder in the first degree -- Sentence
- [9A.32.050](#) Murder in the second degree
- [9A.32.055](#) Homicide by abuse
- [9A.32.060](#) Manslaughter in the first degree
- [9A.32.070](#) Manslaughter in the second degree

## **ASSAULT - PHYSICAL HARM**

### Chapter 9A.36 RCW

- [9A.36.011](#) Assault in the first degree
- [9A.36.021](#) Assault in the second degree
- [9A.36.031](#) Assault in the third degree
- [9A.36.041](#) Assault in the fourth degree
- [9A.36.045](#) Drive-by shooting
- [9A.36.050](#) Reckless endangerment
- [9A.36.060](#) Promoting a suicide attempt
- [9A.36.070](#) Coercion
- [9A.36.078](#) Malicious harassment -- Finding
- [9A.36.080](#) Malicious harassment -- Definition and criminal penalty

- [9A.36.083](#) Malicious harassment -- Civil action
- [9A.36.090](#) Threats against governor or family
- [9A.36.100](#) Custodial assault
- [9A.36.120](#) Assault of a child in the first degree
- [9A.36.130](#) Assault of a child in the second degree
- [9A.36.140](#) Assault of a child in the third degree
- [9A.36.150](#) Interfering with the reporting of domestic violence

## **KIDNAPPING, UNLAWFUL IMPRISONMENT, AND CUSTODIAL INTERFERENCE**

### Chapter 9A.40 RCW

- [9A.40.010](#) Definitions
- [9A.40.020](#) Kidnapping in the first degree
- [9A.40.030](#) Kidnapping in the second degree
- [9A.40.040](#) Unlawful imprisonment
- [9A.40.060](#) Custodial interference in the first degree
- [9A.40.070](#) Custodial interference in the second degree
- [9A.40.080](#) Custodial interference -- Assessment of costs -- Defense -- Consent defense, restricted
- [9A.40.090](#) Luring

## **SEX OFFENSES**

### Chapter 9A.44 RCW

- [9A.44.010](#) Definitions
- [9A.44.020](#) Testimony -- Evidence -- Written motion -- Admissibility
- [9A.44.030](#) Defenses to prosecution under this chapter
- [9A.44.040](#) Rape in the first degree
- [9A.44.045](#) First degree rape -- Penalties
- [9A.44.050](#) Rape in the second degree
- [9A.44.060](#) Rape in the third degree
- [9A.44.073](#) Rape of a child in the first degree
- [9A.44.076](#) Rape of a child in the second degree
- [9A.44.079](#) Rape of a child in the third degree
- [9A.44.083](#) Child molestation in the first degree
- [9A.44.086](#) Child molestation in the second degree
- [9A.44.089](#) Child molestation in the third degree
- [9A.44.093](#) Sexual misconduct with a minor in the first degree
- [9A.44.096](#) Sexual misconduct with a minor in the second degree
- [9A.44.100](#) Indecent liberties
- [9A.44.105](#) Sexually violating human remains
- [9A.44.115](#) Voyeurism
- [9A.44.120](#) Admissibility of child's statement -- Conditions
- [9A.44.130](#) Registration of sex offenders and kidnapping offenders -- Procedures -- Definition -- Penalties

<a href="#">9A.44.135</a>	Address verification
<a href="#">9A.44.140</a>	Registration of sex offenders and kidnapping offenders -- End of duty to register - - Expiration of subsection
<a href="#">9A.44.145</a>	Notification to offenders of changed requirements
<a href="#">9A.44.150</a>	Testimony of child by closed circuit television
<a href="#">9A.44.160</a>	Custodial sexual misconduct in the first degree
<a href="#">9A.44.170</a>	Custodial sexual misconduct in the second degree
<a href="#">9A.44.180</a>	Custodial sexual misconduct -- Defense
<a href="#">9A.44.900</a>	Decodifications and additions to this chapter
<a href="#">9A.44.901</a>	Construction -- Sections decodified and added to this chapter
<a href="#">9A.44.902</a>	Effective date -- 1979 ex.s. c 244
<a href="#">9A.44.903</a>	Section captions -- 1988 c 145

## **HARASSMENT**

### Chapter 9A.46 RCW

<a href="#">9A.46.010</a>	Legislative finding
<a href="#">9A.46.020</a>	Definition -- Penalties
<a href="#">9A.46.030</a>	Place where committed
<a href="#">9A.46.040</a>	Court-ordered requirements upon person charged with crime -- Violation
<a href="#">9A.46.050</a>	Arrestment -- No-contact order
<a href="#">9A.46.060</a>	Crimes included in harassment
<a href="#">9A.46.070</a>	Enforcement of orders restricting contact
<a href="#">9A.46.080</a>	Order restricting contact -- Violation
<a href="#">9A.46.090</a>	Nonliability of peace officer
<a href="#">9A.46.100</a>	"Convicted," time when
<a href="#">9A.46.110</a>	Stalking
<a href="#">9A.46.120</a>	Criminal gang intimidation
<a href="#">9A.46.900</a>	Short title
<a href="#">9A.46.905</a>	Effective date -- 1985 c 288
<a href="#">9A.46.910</a>	Severability -- 1985 c 288
<a href="#">9A.46.040</a>	Court-ordered requirements upon person charged with crime -- Violation
<a href="#">9A.46.050</a>	Arrestment -- No-contact order
<a href="#">9A.46.060</a>	Crimes included in harassment
<a href="#">9A.46.070</a>	Enforcement of orders restricting contact
<a href="#">9A.46.080</a>	Order restricting contact -- Violation
<a href="#">9A.46.090</a>	Nonliability of peace officer
<a href="#">9A.46.100</a>	"Convicted," time when
<a href="#">9A.46.110</a>	Stalking
<a href="#">9A.46.120</a>	Criminal gang intimidation
<a href="#">9A.46.900</a>	Short title
<a href="#">9A.46.905</a>	Effective date -- 1985 c 288
<a href="#">9A.46.910</a>	Severability -- 1985 c 288

## **SENTENCING REFORM ACT OF 1981**

### Chapter 9.94A RCW

- 9.94A.010 Purpose
- 9.94A.015 Finding – Intent
- 9.94A.030 Definitions
- 9.94A.535 Departures from the guidelines (pregnant victim, in presence of minor)

## **HARASSMENT**

### Chapter 10.14 RCW

- 10.14.010 Legislative intent and findings
- 10.14.020 Definitions
- 10.14.030 Course of conduct – Determination of purpose
- 10.14.040 Protection order – Petition
- 10.14.050 Administrator for courts – Forms, information
- 10.14.055 Fees excused, when
- 10.14.060 Proceeding in forma pauperis
- 10.14.070 Hearing – Service
- 10.14.080 Antiharassment protection orders – Ex parte temporary – Hearing – Longer term, renewal
- 10.14.085 Hearing reset after ex parte order – Service by publication – Circumstances
- 10.14.090 Representation or appearance
- 10.14.100 Service of order
- 10.14.105 Order following service by publication
- 10.14.110 Notice to law enforcement agencies -- Enforceability
- 10.14.115 Enforcement of order – Knowledge prerequisite to penalties – Reasonable efforts to serve copy of order
- 10.14.120 Disobedience of order – Penalties
- 10.14.125 Service by publication – Costs
- 10.14.130 Exclusion of certain actions
- 10.14.140 Other remedies
- 10.14.150 Jurisdiction
- 10.14.160 Where action may be brought
- 10.14.170 Criminal penalty
- 10.14.180 Modification of order
- 10.14.190 Constitutional rights
- 10.14.200 Availability of orders in family law proceedings
- 10.14.900 Severability

## **DOMESTIC VIOLENCE – OFFICIAL RESPONSE**

### Chapter 10.99 RCW

- 10.99.010 Purpose – Intent
- 10.99.020 Definitions
- 10.99.030 Law enforcement officers – Trainings, powers, duties – Domestic violence reports
- 10.99.040 Duties of court – No contact orders
- 10.99.045 Appearances by defendant – No contact orders

- 10.99.050 Victim contact – Restriction, prohibition – Violation, penalties – Written order – Procedures – Notice of change
- 10.99.055 Enforcement of orders
- 10.99.060 Prosecutor’s notice to victim – Description of available procedures
- 10.99.070 Liability of peace officers
- 10.99.900 Severability

## **WARRANTS AND ARRESTS**

### Chapter 10.31 RCW

- 10.31.100 Arrest without warrant

## **DOMESTIC RELATIONS**

### Title 26 RCW

- 26.09 Dissolution of Marriage – Legal Separation
- 26.10 Non-Parental Actions for Child Custody
- 26.18 Child Support Enforcement
- 26.26 Uniform Parentage Act
- 26.27 Uniform Child Custody Jurisdiction Act
- 26.44 Abuse of Children

### **26.50 Domestic Violence Prevention**

- 26.50.10 Definitions
- 26.50.20 Commencement of action -- Jurisdiction -- Venue
- 26.50.21 Actions on behalf of vulnerable adults -- Authority of department of social and health services -- Immunity from liability
- 26.50.25 Orders under this chapter and chapter [26.09](#), [26.10](#), or [26.26](#) RCW -- Enforcement -- Consolidation
- 26.50.30 Petition for an order for protection -- Availability of forms and informational brochures -- Bond not required
- 26.50.35 Development of instructions, informational brochures, forms, and handbook by the administrator for the courts -- Community resource list--Distribution of master copy
- 26.50.40 Fees not permitted -- Filing, service of process, certified copies
- 26.50.50 Hearing -- Service -- Time
- 26.50.55 Appointment of interpreter
- 26.50.60 Relief -- Duration -- Realignment of designation of parties -- Award of costs, service fees, and attorneys' fees
- 26.50.70 Ex parte temporary order for protection
- 26.50.80 Issuance of order -- Assistance of peace officer -- Designation of appropriate law enforcement agency
- 26.50.85 Hearing reset after ex parte order -- Service by publication -- Circumstances
- 26.50.90 Order -- Service -- Fees
- 26.50.95 Order following service by publication



- 26.50.100 Order -- Transmittal to law enforcement agency -- Record in law enforcement information system – Enforceability
- 26.50.110 Violation of order -- Penalties
- 26.50.115 Enforcement of ex parte order -- Knowledge of order prerequisite to penalties -- Reasonable efforts to serve copy of order
- 26.50.120 Violation of order -- Prosecuting attorney or attorney for municipality may be requested to assist -- Costs and attorney's fee
- 26.50.123 Service by mail
- 26.50.125 Service by publication or mailing -- Costs
- 26.50.130 Order -- Modification -- Transmittal
- 26.50.135 Residential placement or custody of a child -- Prerequisite
- 26.50.140 Peace officers -- Immunity
- 26.50.150 Domestic violence perpetrator programs
- 26.50.160 Judicial information system -- Data base (*as amended by 2000 c 51*)
- 26.50.160 Judicial information system -- Data base (*as amended by 2000 c 119*)
- 26.50.200 Title to real estate -- Effect
- 26.50.210 Proceedings additional
- 26.50.220 Parenting plan -- Designation of parent for other state and federal purposes
- 26.50.900 Short title
- 26.50.901 Effective date -- 1984 c 263
- 26.50.902 Severability -- 1984 c 263
- 26.50.903 Severability -- 1992 c 111

**26.52 Foreign Protection Order Full Faith and Credit Act**

- 26.52.005 Findings -- Intent
- 26.52.010 Definitions
- 26.52.020 Foreign protection orders -- Validity
- 26.52.030 Foreign protection orders -- Filing -- Assistance
- 26.52.040 Filed foreign protection orders -- Transmittal to law enforcement agency -- Entry into law enforcement information system
- 26.52.050 Peace officer immunity
- 26.52.060 Fees not permitted for filing, preparation, or copies
- 26.52.070 Violation of foreign orders -- Penalties
- 26.52.080 Child custody disputes
- 26.52.900 Short title -- 1999 c 184
- 26.52.901 Captions not law -- 1999 c 184
- 26.52.902 Severability -- 1999 c 184

**ADDRESS CONFIDENTIALITY FOR VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, AND STALKING**

Chapter 40.24 RCW

- [40.24.010](#) Findings -- Purpose
- [40.24.020](#) Definitions
- [40.24.030](#) Address confidentiality program -- Application -- Certification
- [40.24.040](#) Certification cancellation

- [40.24.050](#) Agency use of designated address
- [40.24.060](#) Voting by program participant -- Use of designated address by county auditor
- [40.24.070](#) Disclosure of records prohibited -- Exceptions
- [40.24.080](#) Assistance for program applicants
- [40.24.090](#) Adoption of rules

## **DEPARTMENT OF HEALTH**

### Chapter 43.70 RCW

- 43.70.610 Domestic violence education program – Established – Findings

## **INSURANCE CONTRACT**

### Chapter 48.18 RCW

- 48.18.550 Victims of domestic abuse – Prohibition on certain cancellations, denials, refusals to renew, and different rates – Domestic abuse defined

## **EMPLOYMENT LAW – DOMESTIC VIOLENCE LEAVE**

### Title 49 RCW

- 49.76.010 Legislative findings.
- 49.76.020 Definitions.
- 49.76.030 Domestic violence leave -- Victims and family members -- Purpose.
- 49.76.040 Documentation of leave -- Notice of purpose -- Confidentiality.
- 49.76.050 Retention of pay or benefits -- Exceptions -- Health coverage.
- 49.76.060 Scope -- Application -- Expansion of rights.
- 49.76.070 Enforcement -- Complaint -- Investigation -- Notice of infraction.
- 49.76.080 Enforcement -- Penalty for infraction.
- 49.76.090 Enforcement -- Record confidentiality -- Exceptions.
- 49.76.100 Enforcement -- Remedies -- Civil actions.
- 49.76.110 Effect of administrative findings and conclusions on civil action.
- 49.76.120 Retaliation against employee.
- 49.76.130 Notice to employees -- Department of labor and industries.
- 49.76.140 Notice to employees--Prosecutors -- Victims' advocates.
- 49.76.150 Authority to adopt rules.
- 49.76.900 Effective date -- 2008 c 286.

## **SHELTERS FOR VICTIMS OF DOMESTIC VIOLENCE**

### Chapter 70.123 RCW

- 70.123.010 Legislative findings.
- 70.123.020 Definitions.
- 70.123.030 Departmental duties and responsibilities.
- 70.123.040 Minimum standards to provide basic survival needs.
- 70.123.050 Contracts with nonprofit organizations -- Purposes.

- 70.123.070 Duties and responsibilities of shelters.
- 70.123.075 Client records.
- 70.123.076 Disclosure of recipient information.
- 70.123.080 Department to consult.
- 70.123.090 Contracts for shelter services.
- 70.123.100 Funding for shelters.
- 70.123.110 Assistance to families in shelters.
- 70.123.120 Liability for withholding services.
- 70.123.130 Technical assistance grant program -- Local communities.
- 70.123.140 Technical assistance grant for county plans.
- 70.123.150 Domestic violence prevention account.
- 70.123.900 Severability -- 1979 ex.s. c 245.

## **VICTIMS OF SEXUAL ASSAULT**

### Chapter 70.125 RCW

- 70.125.010 Short title
- 70.125.020 Legislative findings – Program objectives
- 70.125.030 Definitions
- 70.125.040 Coordinating office – Biennial statewide plan
- 70.125.050 Statewide program services
- 70.125.055 Financial assistance to rape crisis centers
- 70.125.060 Personal representative may accompany victim during treatment or proceedings
- 70.125.065 Records of rape crisis centers not available as part of discovery – Exceptions
- 70.125.080 Community sexual assault programs – Victim advocates

## **ABUSE OF VULNERABLE ADULTS**

### Chapter 74.34 RCW

- 74.34.005 Findings.
- 74.34.020 Definitions.
- 74.34.021 Vulnerable adult -- Definition.
- 74.34.025 Limitation on recovery for protective services and benefits.
- 74.34.035 Reports -- Mandated and permissive -- Contents -- Confidentiality.
- 74.34.040 Reports -- Contents -- Identity confidential.
- 74.34.050 Immunity from liability.
- 74.34.053 Failure to report -- False reports -- Penalties.
- 74.34.063 Response to reports -- Timing -- Reports to law enforcement agencies  
Notification to licensing authority.
- 74.34.067 Investigations -- Interviews -- Ongoing case planning -- Conclusion of  
investigation.
- 74.34.068 Investigation results -- Report -- Rules.
- 74.34.070 Cooperative agreements for services.
- 74.34.080 Injunctions.
- 74.34.090 Data collection system -- Confidentiality.
- 74.34.095 Confidential information--Disclosure.

- 74.34.110 Protection of vulnerable adults -- Petition for protective order.
- 74.34.115 Protection of vulnerable adults -- Administrative office of the courts -- Standard petition -- Order for protection -- Standard notice -- Court staff handbook.
- 74.34.120 Protection of vulnerable adults -- Hearing.
- 74.34.130 Protection of vulnerable adults -- Judicial relief.
- 74.34.135 Protection of vulnerable adults -- Filings by others--Dismissal of petition or order -- Testimony or evidence -- Additional evidentiary hearings -- Temporary order.
- 74.34.140 Protection of vulnerable adults -- Execution of protective order.
- 74.34.145 Protection of vulnerable adults -- Notice of criminal penalties for violation -- Enforcement under RCW 26.50.110.
- 74.34.150 Protection of vulnerable adults -- Department may seek relief.
- 74.34.160 Protection of vulnerable adults -- Proceedings are supplemental.
- 74.34.163 Application to modify or vacate order.
- 74.34.165 Rules.
- 74.34.170 Services of department discretionary -- Funding.
- 74.34.180 Retaliation against whistleblowers and residents -- Remedies -- Rules.
- 74.34.200 Abandonment, abuse, financial exploitation, or neglect of a vulnerable adult -- Cause of action for damages -- Legislative intent.
- 74.34.205 Abandonment, abuse, or neglect -- Exceptions.
- 74.34.210 Order for protection or action for damages -- Standing -- Jurisdiction.
- 74.34.300 Vulnerable adult fatality reviews.
- 74.34.900 Severability -- 1984 c 97.
- 74.34.901 Severability -- 1986 c 187.

## **LONG-TERM CARE SERVICE OPTIONS**

### Chapter 74.39 RCW

- 74.39.001 Finding
- 74.39.005 Purpose
- 74.39.007 Definitions

## WASHINGTON ADMINISTRATIVE CODE

*Washington Administrative Code: <http://www.leg.wa.gov/wac/>*

## **DOMESTIC VIOLENCE PERPETRATOR TREATMENT PROGRAM STANDARDS**

### WAC 388.60

#### **Definitions:**

388.60.0015\* What definitions apply to this chapter?

#### **Purpose:**

388.60.0025\* What is the purpose of this chapter?

388.60.0035 Must domestic violence perpetrator treatment programs be certified?

388.60.0045 What must be the focus of a domestic violence perpetrator treatment program?

388.60.0055 What must be a treatment program's primary goal?

### **Required Policies and Procedures:**

- 388.60.0065 What steps must a treatment program take to address victim safety?
- 388.60.0075 What must a treatment program require of its participants?
- 388.60.0085 What requirements apply to group treatment sessions?
- 388.60.0095 May a participant be involved in more than one type of treatment while enrolled in a domestic violence perpetrator treatment program?
- 388.60.0105 What requirements does the department have for treatment programs regarding nondiscrimination?
- 388.60.0115 Does a program have the authority to screen referrals?
- 388.60.0125 What rights do participants in a treatment program have?

### **Confidentiality:**

- 388.60.0135\* What information about the participant must the treatment program keep confidential?
- 388.60.0145\* What releases must a program require a participant to sign?
- 388.60.0155\* Must a treatment program keep information provided by or about a victim confidential?
- 388.60.0165\* What information must the treatment program collect and discuss with the client during the intake process or assessment interview?
- 388.60.0175 Who may complete the intake process or conduct the assessment interview?
- 388.60.0185 Must the program compile a written document based on information gathered in the intake/assessment process?
- 388.60.0195 Must the treatment program develop an individual treatment plan for each participant?
- 388.60.0205 What must a treatment program consider when developing an individual treatment plan for a participant?
- 388.60.0215 Must a program require a participant to sign a contract for services with the treatment program?
- 388.60.0225 What must the treatment program include in the contract for each participant's treatment?
- 388.60.0235 Must a treatment program follow an educational curriculum for each participant?
- 388.60.0245 What topics must the treatment program include in the educational curriculum?
- 388.60.0255 What is the minimum treatment period for program participants?
- 388.60.0265 What criteria must be satisfied for completion of treatment?
- 388.60.0275 What must the treatment program do when a participant satisfactorily completes treatment?
- 388.60.0285 Must a treatment program have policies regarding any reoffenses during treatment?
- 388.60.0295 Does a program need guidelines for discharging participants who do not complete treatment?
- 388.60.0305 Who must the program notify when the program discharges a participant because of failure to complete treatment?

## **FAMILY VIOLENCE**

WAC 388.61

388.61.001 What does the Family Violence Amendment mean for TANF recipients?

## **SHELTERS FOR VICTIMS OF DOMESTIC VIOLENCE**

WAC 388.61A

### **Purposes:**

- 388.61A.0005 What is the legal basis for the domestic violence shelter program?
- 388.61A.0010 What is the purpose of having minimum standards for domestic violence shelters and services?
- 388.61A.0015 Is DSHS required to provide funding to any domestic violence service that requests funding?
- 388.61A.0020 What are the facility and service requirements for domestic violence services?
- 388.61A.0025 What definitions apply to domestic violence shelters and services?

### **General Facility Requirements:**

- 388.61A.0030 What safety requirements is the shelter required to meet?
- 388.61A.0035 What are the general requirements for bedrooms?
- 388.61A.0040 What kind of diaper changing area must I provide?
- 388.61A.0045 What are the kitchen requirements?
- 388.61A.0050 Are there any restrictions on food preparation?
- 388.61A.0055 What are the requirements for providing food and clothing to shelter residents?
- 388.61A.0060 What are the requirements for toilets, sinks, and bathing facilities?
- 388.61A.0065 What types of linen do I need to provide to clients?
- 388.61A.0070 What are the requirements for laundry facilities?
- 388.61A.0075 Are there requirements for drinking water?
- 388.61A.0080 What are the requirements for sewage and liquid wastes?
- 388.61A.0085 What kind of heating system is required?
- 388.61A.0090 How must I ventilate the shelter?
- 388.61A.0095 How much lighting is required in the shelter?
- 388.61A.0100 Are there any requirements about pets in the shelter?
- 388.61A.0105 What first-aid supplies must I provide?
- 388.61A.0110 What are the requirements for storing medications?
- 388.61A.0115 What measures must I take for pest control?
- 388.61A.0120 What are the requirements for labeling and storing chemicals and toxic materials?
- 388.61A.0125 Where do I keep firearms and other dangerous weapons?

### **Additional requirements for safe homes:**

- 388.61A.0130 What are the additional requirements for a safe home?

### **Additional requirements for shelter homes:**

- 388.61A.0135 What are the additional requirements for a shelter home?

### **Supportive services:**

- 388.61A.0140 What supportive services am I required to provide to clients?
- 388.61A.0145 What is advocacy-based counseling?
- 388.61A.0150 What type of training is required for staff of the domestic violence service?
- 388.61A.0155 Must supervisors of domestic violence service staff have specific experience and training?
- 388.61A.0160 What written policies and procedures do you need to have?

**Compliance with standards:**

- 388.61A.0165 Will DSHS do an evaluation of the domestic violence service?
- 388.61A.0170 What will happen if I am out of compliance with my contract?
- 388.61A.0175 What will happen if there is a complaint to DSHS about the domestic violence service?
- 388.61A.0180 Can DSHS waive any of the minimum standards of this chapter?

**Appeal process:**

- 388.61A.0185 What are my rights if DSHS suspends, revokes, or denies funding?
- 388.61A.0190 Will I be notified if my funding has been suspended, revoked, or denied?
- 388.61A.0195 How do I request an agency hearing?

**WASHINGTON COURT RULES**

*Washington Court Rules: [http://www.courts.wa.gov/court\\_rules/index.cfm?&text=printNO](http://www.courts.wa.gov/court_rules/index.cfm?&text=printNO)*

**MANDATORY CONTINUING JUDICIAL EDUCATION**

Washington State Court Rules: General Rule 26

Preamble. The protection of the rights of free citizens depends upon the existence of an independent and competent judiciary. The challenge of maintaining judicial competence requires ongoing education of judges in the application of legal principles and the art of judging in order to meet the needs of a changing society. This rule establishes the minimum requirements for continuing education of judicial officers.

- a. **Minimum Requirement.** Each judicial officer shall complete a minimum of 45 credit hours of judicial education approved by the Board for Court Education (BCE) every three years, commencing January 1 of the calendar year following the adoption of this rule. If a judicial officer completes more than 45 such credit hours in a three-year reporting period, up to 15 hours of the excess credit may be carried forward and applied to the judicial officer’s education requirement for the following three-year reporting period. At least six credit hours for each three-year reporting period shall be earned by completing programs in judicial ethics approved by the BCE. The fifteen credit hours that may be carried forward may include two credit hours toward the judicial ethics requirement.
- b. **Judicial College Attendance.**

1. A judicial officer shall attend and complete the Washington Judicial College program within twelve months of the initial appointment or election to the judicial office.
  2. A judicial officer who attended the Washington Judicial College during his or her term of office in a court of limited jurisdiction shall attend and complete the Washington Judicial College within twelve months of any subsequent appointment or election to the Superior Court. A judicial officer who attended the Washington Judicial College during his or her term of office in the Superior Court shall attend and complete the Washington Judicial College within twelve months of any subsequent appointment or election as a judicial officer in a court of limited jurisdiction. A judicial officer who attended the Washington Judicial College during his or her term of office in a superior court or court of limited jurisdiction and is subsequently appointed or elected to an appellate court position is not required to attend the Washington Judicial College.
  3. A judicial officer of a District Court, Municipal Court, Superior Court, or an appellate court, who has been a judicial officer at the time of the adoption of this rule for less than four years but has not attended the Washington Judicial College, shall attend and complete the Washington Judicial College program within twelve months of the adoption of this rule.
- c. Accreditation. BCE shall, subject to the approval of the Supreme Court, establish and publish standards for accreditation of continuing judicial education programs and may choose to award continuing judicial education credits for self-study or teaching. Judicial education credit shall be given for programs BCE determines enhance the knowledge and skills that are relevant to the judicial office.
- d. Compliance Report. Each judicial officer shall file a report with the Administrative Office of the Courts (AOC) on or before January 31 each year in such form as the Administrative Office of the Courts shall prescribe concerning the judicial officer's progress toward the judicial education requirements of sections (a) and (b) of this rule during the previous calendar year. By April 15, BCE shall send a reminder of the requirements of this rule to any judicial officer who has not filed the annual progress report. AOC shall publish a report with the names of all judicial officers who do not fulfill the requirements of sections (a) and (b) of this rule. The AOC report shall be disseminated by means that may include, but are not limited to, publishing on the Washington Courts Internet web site, publishing the information as part of any voter's guide produced by or under the direction of the Administrative Office of the Courts, and releasing the information in electronic or printed form to media organizations throughout the State.
- e. Delinquency. Failure to comply with the requirements of this rule may be deemed a violation of the Code of Judicial Conduct that would subject a judicial officer to sanction by the Commission on Judicial Conduct.



- f. Definition. The term "judicial officer" as used in this rule shall not include judges pro tempore but shall otherwise include all full or part time appointed or elected justices, judges, court commissioners and magistrates.

[Adopted effective July 1, 2002; amended effective November 26, 2002.]

## **DEFINITION OF THE PRACTICE OF LAW**

Washington State Court Rules: General Rule 24

(a) General Definition: The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law. This includes but is not limited to:

- (1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.
- (2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).
- (3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.
- (4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

(b) Exceptions and Exclusions: Whether or not they constitute the practice of law, the following are permitted:

- (1) Practicing law authorized by a limited license to practice pursuant to Admission to Practice Rules 8 (special admission for: a particular purpose or action; indigent representation; educational purposes; emeritus membership; house counsel), 9 (legal interns), 12 (limited practice for closing officers), or 14 (limited practice for foreign law consultants).
- (2) Serving as a courthouse facilitator pursuant to court rule.
- (3) Acting as a lay representative authorized by administrative agencies or tribunals.
- (4) Serving in a neutral capacity as a mediator, arbitrator, conciliator, or facilitator.
- (5) Participation in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements.

(6) Providing assistance to another to complete a form provided by a court for protection under RCW chapters 10.14 (harassment) or 26.50 (domestic violence prevention) when no fee is charged to do so.

(7) Acting as a legislative lobbyist.

(8) Sale of legal forms in any format.

(9) Activities which are preempted by Federal law.

(10) Serving in a neutral capacity as a clerk or court employee providing information to the public pursuant to Supreme Court Order.

(11) Such other activities that the Supreme Court has determined by published opinion do not constitute the unlicensed or unauthorized practice of law or that have been permitted under a regulatory system established by the Supreme Court.

(c) Non-lawyer Assistants: Nothing in this rule shall affect the ability of non-lawyer assistants to act under the supervision of a lawyer in compliance with Rule 5.3 of the Rules of Professional Conduct.

(d) General Information: Nothing in this rule shall affect the ability of a person or entity to provide information of a general nature about the law and legal procedures to members of the public.

(e) Governmental agencies: Nothing in this rule shall affect the ability of a governmental agency to carry out responsibilities provided by law.

(f) Professional Standards: Nothing in this rule shall be taken to define or affect standards for civil liability or professional responsibility.

[Adopted effective September 1, 2001; amended effective April 30, 2002.]

## **UNAUTHORIZED PRACTICE OF LAW**

Washington State Court Rules: Rules of Professional Conduct 5.5

A lawyer shall not:

- a. Practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction;
- b. Assist a person who is not a member of the Bar in the performance of activity that constitutes the unauthorized practice of law;
- c. Permit his or her name to be used as a lawyer by another person who is not a lawyer authorized to practice law in the state of Washington;
- d. Engage in any of the following with an individual who is a disbarred or suspended lawyer or who has resigned in lieu of disbarment:

1. Practice law with or in cooperation with such an individual;
2. Maintain an office for the practice of law in a room or office occupied or used in whole or in part by such an individual;
3. Permit such an individual to use the lawyer's name for the practice of law;
4. Practice law for or on behalf of such an individual
5. Practice law under any arrangement or understanding for division of fees or compensation of any kind with such an individual; or
6. Engage in the practice of law while on inactive status, or while suspended from the practice of law for any cause.

[Amended effective October 1, 2002.]