



**Domestic
Violence Cases
in
Municipal Court**

Judicial Decision-Making

Judicial role in case processing

The following guidelines have been developed with a focus on victim safety, perpetrator accountability, case management, and docket control. The outline follows judicial decision-making processes in municipal court cases involving domestic violence.

Domestic violence (DV) is behaviorally defined as pattern of assaultive and coercive conduct that includes criminal and noncriminal behaviors and may be dangerous to victims, children, and the community. Therefore, safety is a primary concern. At every stage of the proceedings, the judge must weigh the indicators of danger described below as lethality factors.

Lethality factors

- Threats to kill
- Use, or threatened use, of weapons or access to weapons
- Threat or attempt of suicide
- Escalating severity or frequency of violence
- Stalking or hostage taking
- Substance abuse
- Prior violation of court orders
- Victim separating from perpetrator

While many victim witnesses follow through with the legal proceedings, others are worn down by the perpetrator and lengthy legal proceedings and become ambivalent or recanting victims. Ambivalence by victims should place judges, prosecutors, law enforcement and advocates on notice that the victim's safety may not have been adequately addressed. Court practices that are focused on victim safety, victim witness support, and speedy due process increase the likelihood of positive outcomes.

Telephonic first contact (by law enforcement, prosecutors, where applicable)

1. Probable cause determination.

2. Review lethality factors.

3. No contact order (NCO).

- May be issued at arrest. RCW 10.99.040(2). Expires at arraignment or within 72 hours if no charges filed. RCW 10.99.040(5).

4. Bail.

- No bail pending judicial issuance of NCO and review of bail amount.

First court appearance/arraignment

If first contact is in court, in addition to the above under telephonic first contact, do the following:

1. Advice of rights.

Standard criminal advice of rights plus:

- Immigration — “If you are not a citizen of the United States, a conviction may be grounds for deportation, exclusion from admission to the United States, or denial of naturalization.”
- Firearms — “If convicted, you will lose your constitutional right to own, possess, or control a firearm under both state and federal law.”
- DNA Collection — “If you are convicted of the crimes of stalking or harassment you will be required to submit a biological sample for DNA identification analysis.”

- Additional instruction — “The court may impose state-certified DV treatment, a continuing NCO with the victim, and/or two years active probation.”

Advise the defendant (and victim, if present) — “Only the prosecutor can decide whether or not to file or drop charges.”

2. No contact orders.

- Consider phone block to victim’s phone number, if perpetrator in custody.
- May issue before, after, or concurrent with civil protection orders. Issue NCO even if civil orders exist. Superior Court may be unaware of criminal charges.
- NCO may be issued, modified, or terminated at any stage of the proceedings.
- Check JIS data base for existing orders and determine most appropriate restrictions; NCOs may need to be more restrictive than existing orders.
- Include children in NCO when they are victims or witnesses. No jurisdiction to address custody, visitation or division of property.
- Reasonable restriction on proximity to victim, victim’s residence, place of work, school, or daycare of children. *State v. Noah*, 103 W. App. 29 (2000).
- Court may authorize and instruct defendant how to obtain personal property via law enforcement civil standby.
- Allow victim input and advise victim of DV victim resources and Washington State DV hotline: 1-800-562-6025 (voice/tty).
- Criminal court has no jurisdiction to impose orders on victim.
- Even if victim initiates or allows contact, defendant will be subject to arrest. RCW 10.99.040(4)(b).

- Notify defendant and victim of court’s modification and termination procedures.
- Do not require victims to access DV victim services before termination or modification.
- Full faith and credit, RCW 26.52, allows for enforcement of NCOs in all states, territories and tribal lands.
- Violation (not just conviction) of NCOs may subject noncitizens to removal from the United States. 8 U.S.C. Section 1227(a)(2)(E)(ii).

Pleas

1. Not guilty.

Conditions of release — In addition to CrRLJ 3.2, review lethality factors.

Bail plus:

- No contact order (see section above on NCOs).
- No firearms or other dangerous weapons and ammunition. Check with Department of Licensing, Business & Professions Firearms Unit, or law enforcement for firearms licenses and registration.
- When “credible threat to physical safety of victim or children,” enter certified order of surrender for safekeeping. Require defendant to file receipt from law enforcement or proof of sale. RCW 9.41.800(1).
- For federal firearms prohibitions, see USC Section 922 (g)(8) – (9).
- No possession or use of alcohol, nonprescription controlled substances.
- Drug or alcohol screening.
- Travel restrictions.

- Supervised release, including day reporting or court review.
- Notice: Defendant acknowledges on record the next court appearance. Prompt issuance of bench warrants.

2. Guilty.

- Stipulated order of continuance (SOC) (or diversion program). Only one SOC in a lifetime when first-time offender takes responsibility on the record. Include language stipulating to the accuracy and admissibility of police report and accepting responsibility for conduct in reports.
- Deferred sentencing — discouraged because of need to document escalating violence. If used, not for intimate partner violence.
- Newton/Alford (no contest) pleas — discouraged because need to hold accountable. If plea accepted, do not order batterers’ treatment.

Pretrial

1. Continuances embolden perpetrators and jeopardize victim safety.

- Avoid continuances. Apply 60-day standard from filing to disposition. Set within speedy trial guidelines, without waiver.

2. Discourage termination or modification of pretrial NCOs.

3. Refer back to NCO sections.

Trial

1. Voir dire.

- Judges should include general questions on DV to ensure impartiality.

2. Evidentiary issues.

- Using evidence rules, cases can proceed without the victim witness. It is not court's role to influence prosecutorial decision to proceed without victim participation.

(Consult resources: Gender and Justice Commission's *Domestic Violence Manual for Judges*, and most recent *Washington Practice Series, Volume 5D, Courtroom Handbook on Washington Evidence* by Karl B. Tegland.)

- ER 404(b) — Admission of prior acts of DV may help jury understand the unique characteristics of DV. Articulate analysis on record, e.g., to apply cycle of violence, to assess victim's credibility, or to prove identity, motive and context of crime, lack of accident, intent, opportunity, res gestae, and/or objective reasonableness of the victim's fear of the defendant's threats.

Demonstrating victim's fear (DV harassment cases) may be admissible. See ER 609. See *State v. Barragan*, 102 Wn. App. 754, 9 P3d 942 (2000).

Customize jury instructions — Craft a limiting instruction when prior bad acts are admitted.

- Excited utterances — Applies to 911 calls and statements. ER 803(a)(2).
- Present sense impressions — Includes admission of 911 tapes as the caller reports what is taking place. ER 803(a)(1).
- Past recollection recorded — Allows victim statements as substantive evidence not just impeachment. ER 803(a)(5).

- Smith affidavit — Sworn victim statement taken for the purpose of determining existence of probable cause may not be used in lieu of live testimony from a victim, but it may be used to fill substantive evidentiary gaps at trial. *State v. Smith*, 97 Wn. 2d 856 (1982). Smith affidavit admission requires victim to testify inconsistently at trial or for the defense to claim fabrication at a later date.

- Leading — Prosecutor may lead victim as witness if the witness becomes hostile. Rule 611. Also ER 607 permits a witness to be impeached by either party.

The leading DV cases on specific evidentiary issues are *State v. Smith*, 97 Wn. 2d 856 (1982); *State v. Powell*, 126 Wn. 2d 244; *State v. Bradford*, 56 Wn. App. 464 (1989); *State v. Nelson*, 74 Wn. App. 380, 874 P.2d 170 (1994); *State v. Sims*, 77 Wn. App. 236, 890 P.2d. 521 (1995); *State v. Grant*, 83 Wn. App. 98 (1996); *State v. Ragin*, 94 Wn. App. 407 (1999).

3. Dismissal without prejudice.

- In granting dismissals, do not refer to victim's participation. Instruct defendant that the city may re-file case or bring new charges if evidence of coercion or victim tampering. Record dismissal in terms not to blame the victim.

Sentencing

Review lethality factors. Consider how best to manage rather than predict danger to victims. Victims have a right to address the court in writing, orally or through third party. Consider presence of children or firearms to enhance sentencing. Sentencing should include both jail and supervision. Inform the victims of the sentence.

1. Confinement.

- Jail — Jail communicates seriousness of crime to perpetrator and community.
- Alternatives to jail (for example, work release, electronic home monitoring) are not recommended but may be ordered when jail is not available, but only after careful consideration of perpetrator's access to victim (no residential confinement with the victim).

2. Supervision.

- Courts should monitor offenders in compliance with CrRLJ 11 to manage the risk of reoffending and to promote victim safety. See model probation standards at www.appa-net.org/appafinalstandard.doc.
- Conduct frequent hearings before the judge, with notice to the victim when possible, to monitor progress or modify court-ordered conditions. Initial review should be within two weeks if possible and frequent subsequent reviews.
- Based on court's circumstances and resources, court should use probation department and/or judicial reviews and take prompt action to secure compliance with sentence.

3. Fine.

- Avoid if negatively impacts victim/children or ability to pay for perpetrator treatment.

4. Restitution.

- Order at the time of sentencing where appropriate to pay for victim's/children's services.

5. Treatment.

- DV treatment. Only order when perpetrators take responsibility for conduct, are motivated to change, and culturally appropriate treatment available. Use a certified batterers program. See list at www1.dshs.wa.gov/ca/victimservices/word/persplist2.rtf.
- No anger management classes or couples counseling for intimate partner violence.
- Co-occurring substance abuse/mental illness. May order specialized treatment in addition to, but not in place of, DV treatment.

6. NCOs issued at sentencing.

- Issuing NCOs:
 - Review lethality factors.
 - Consider factors under NCOs in first court appearance/arraignment, above, including check for other orders.
 - Have clear procedures for modifying/terminating NCOs and fully explain to parties at time of issuance.
- Modifying/terminating NCOs:
 - Review lethality factors.
 - Review compliance with all court orders and conditions to date.
 - Ensure that victim and defendant have proper notice and opportunity to be heard on modification/termination.

7. Firearms

- Where appropriate:
 - Order no possession of, or access to, firearms. Order forfeiture of firearms where authorized by state and/or federal law.
 - Order defendants not to reside where weapons are kept and order surrender to law enforcement firearms for safekeeping in cases where forfeiture not authorized. RCW 9.41.040 and 9.41.080.
 - Require defendant to file proof with the court of forfeiture, surrender for safekeeping, or bill of sale.
- Persons subject to a qualifying protection order under federal law are generally prohibited from possessing any firearm or ammunition. Violation of a prohibiting protection order under 18 USC sections 922 (g) (8), 924 (a) (2) is a federal offense punishable by ten years' imprisonment.
- A qualifying protection order under the federal firearm provisions "requires defendant to have actual notice and opportunity to participate in a hearing on the order," includes finding that defendant is a "credible threat to the physical safety of an intimate partner or child," and explicitly prohibits the use, attempted use or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

Judicial Demeanor

- Power of courtroom to further embolden the abuser or take the concerns of the victim seriously. When abused women encounter humane responses from judge informed on DV, they are more likely to achieve safety for themselves and their children.

Noncompliance

- React swiftly to noncompliance. Use graduated sanctions unless lethality factors warrant confinement.

DV statutes

- Domestic Violence and terms defined. RCW 26.50 and 10.99.020
- "Mandatory Arrest/Primary Aggressor." RCW 10.31.100
- No Contact Orders upon pre-trial release and sentencing. RCW 10.99.040, .045, .055.
- Civil Domestic Violence Protection Orders. RCW 26.50.110 and Full Faith and Credit RCW 26.52.
- Restraining Orders. RCW 26.09.300, 26.10.220, 26.26.138, 26.44.130.
- Anti-harassment Orders. RCW 10.14.



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