

## **DOMESTIC VIOLENCE**

Most of our lives are in the family setting, so are many crimes. Human beings have known this forever, psychiatrists for almost as long, and the government only recently changed its approach. Unfortunately, like the Sentence Reform Act, our government went overboard, defined a large group of people as a “domestic” unit, and dramatically reduced the discretion of our police, judges, prosecutors, and therapists.

More than any criminal group, Washington law has ignored the psychologists and developed an oversimplified uniform “treatment program” that avoids individual circumstances and, unlike every other treatment the justice system, assigns one level of treatment for every individual.

Beginning in the 1970s, law agencies and prosecutors began to dramatically change the way they both investigate and prosecute “domestic” cases. Likewise, Washington's Domestic Violence (“DV”) laws have gone through bold political changes over the last fifteen years. Washington now harbors some of the most severe domestic violence arrest, release, and sentencing policies in the nation. Prosecutors often proceed without the cooperation or presence of the victim. A domestic violence charge and temporary no-contact order can immediately remove a suspect from their home and family.

These charges include Assault, Malicious Mischief, Violation of a No Contact Order, and Interfering with A Domestic Violence Phone Call.

### **Mandatory Arrest**

In Washington and unlike most crimes, police officers no longer have the discretion whether or not to arrest the domestic violence suspect. This is a bold departure as the police are given wide discretion in their investigation and detention choices. This applies whether or not the investigation is a serious felony assault (levels 1-3) or a gross misdemeanor (“assault 4”). Unlike most other misdemeanor crimes, police are now required to book the suspect under most circumstances regardless of the severity of the crime, request of the victim, or lack of any other criminal history or domestic dispute.

### **Mandatory Arraignment and Bail**

Unlike other crimes, a domestic violence suspect may also not waive their “arraignment hearing” but must stay in custody and appear before the judge before the court makes a determination on a no-contact order, bail and other conditions of release. Even worse, some jurisdictions are now beginning to impose a “standard bail” amount regardless of the facts of the case or criminal history of the suspect

### **A Long Term “Violent” Record**

Very few attorneys and judges inform the accused DV suspect that a Washington State DV conviction is the only misdemeanor that requires years of additional time before an individual can seal or vacate their criminal record. In addition, their DV conviction will likely immediately disqualify them from entering Canada for at least five years.

### **The Psychological Criticism**

This area contains perhaps the most dramatic departure from the norms and principles of the criminal justice system and psychological community. Psychologists, psychiatrists, and renowned experts on violence know that violence, even within the family, can occur for a wide range of reasons. They also understand that mental and emotional abuse and neglect can often cause equal or greater damage than physical acts. As a result, the medical community tailors their diagnosis and treatment to the situation, the incident, the individual, and the family history. For all other crimes, including substance abuse and assaults outside the domestic circle, the legal community follows this medical rule. For example, one isolated DUI or drug possession does not automatically trigger substance abuse or long term treatment.

### **Even the Judge Acknowledges this Clinical Fiction**

In addition, by nearly all other definitions, an isolated minor incident is not “domestic violence.” *Washington's Domestic Violence Manual for Judges* states there is a significant difference between the behavioral and legal definition of domestic violence. Behaviorally, the manual declares that domestic violence is "not an isolated event" but rather a "pattern of assaultive and controlling behaviors."

### **Incredibly Minimal Acts**

In contrast, the legal definition is much broader and includes any isolated event, however minimal, as long as it is between certain parties. While domestic violence is a very difficult and serious subject, this office has also seen people charged for throwing spaghetti on the wall, breaking a plastic cover, tossing a TV remote to a sister, and having a mental breakdown when mother only called 911 to get medical assistance. Most of this is due to the **mandatory arrest policy** where police, despite their better judgment, feel they have no choice.

Most Washington prosecutors and judges however forego their broader principles and not only charge the person arrested but require them to complete a one year standardized and "certified domestic violence treatment program." This occurs regardless of the facts,

criminal, or medical history. Even worse, few if any of these counselors are licensed psychologists. In fact, most psychologists and psychiatrists elect not to become "certified" because they consider the diagnostic and treatment modality narrow, insufficient and medically invalid.

### **The No Contact Order**

One immediate impact of a domestic violence charge is the court's authority to enter a no-contact order even before the case is proven as a condition of the defendant's release from jail. The court's authority is located in RCW 10.99.040(2),(3). These orders are also issued as a condition of sentence under RCW 10.99.050(2). Although the entry of an order is discretionary, it is now a near routine request by the prosecutor and near automatic response from the court. The court may also issue an order prohibiting contact with children witnesses and others pursuant to CrRLJ 3.2(c).

This order, by its very nature, will expell the accused from their home and have immediate practical and economic pressure. Although the victim has the right to address the court and request that the order is dropped, the prosecutor often objects and the court routinely leaves the order in effect. The clerk of the court is then required to forward a copy of the order to the appropriate law enforcement agency and the data is immediately entered into their computer systems.

### **The Order is Used As Much for Legal Leverage as Safety**

The prosecution then uses this order to pressure the family and defendant to enter a plea of guilty under the promise that it will then recommend that the court allow contact and a return to the home. If the defendant resists and is convicted at trial, the prosecutor then reverses its policy and successfully petitions the court to extend the order for the entire two-year period of misdemeanor probation as a condition of sentence.

### **DROPPING THE NO CONTACT ORDER**

While most courts and prosecutors will automatically prevent contact between married couples, family members or loved ones, the protected individual still has a right to address the court and ask that it be removed. Unfortunately, these orders are so common that they are difficult to remove. In addition, the lawyer representing the individual charged with the crime can not legally assist the other spouse of object of the order as it is a legal "conflict of interest."

**The Law Office of David C. Mason** has developed a unique and affordable product to help an individual (who is not charged) ask that the order be lifted, removed, or modified. We also can provide distinct legal advice for the victim in the criminal case. **PLEASE CONTACT OUR OFFICE FOR A FREE CONSULTATION.**

## **Legal Definitions of Domestic Violence**

Washington has also over defined the “domestic” relationship. This include current spouses, former spouses, adult persons related by blood or marriage, parents of a child in common, unmarried persons of same or different genders currently or previously living together, intimate partners of the same gender, dating relationships, and a biological or legal parent-child relationship.

Washington defines domestic violence as behaviors that include physical or bodily harm, assault, infliction of fear of imminent physical harm, bodily injury, or assault, sexual assault, and stalking.

## **Mandatory Firearm Restrictions**

Under state and federal law, an individual convicted of domestic violence, even a misdemeanor, permanently loses their right to bear firearms. A violation of this condition is a serious felony offense. The only way to restore this right is to petition the superior court.

## **DEFENDING THE CRIMINAL CHARGES**

We have unique experience in this area which includes:

23 years of experience as prosecutors and defense counsel

Training police, prosecutors, and other justice members in Domestic Violence investigation and litigation.

Teaching criminal procedure and evidence at the University of Washington from a medical perspective to medical professionals

Expert legal witness on American and Washington Criminal law and Evidence in a Canadian murder trial.

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