



**WASHINGTON
COURTS**
ADMINISTRATIVE OFFICE OF THE COURTS

**REPORT TO THE LEGISLATURE
Laws of 2010, Ch. 274 (ESHB 2777)
Washington State Administrative Office of the Courts
December 2010**

Introduction

The Washington State Legislature, in enacting ESHB 2777 (Laws of 2010, Ch. 274), directed the Washington State Administrative Office of the Courts (AOC) to:

1. Make changes to the law enforcement information form used by persons seeking ex parte domestic violence protection orders to prompt disclosure of information regarding disability, brain injury, or impairment of the person to be restrained;
2. Develop a pattern form for all no-contact orders issued under Title 10.99 RCW;
3. Develop a model policy to assist courts in implementing new requirements for policies and procedures to grant domestic violence victims¹ an opportunity to seek modification or rescission of no-contact orders;
4. Develop guidelines for all courts to establish a process to reconcile duplicate or conflicting no-contact or protection orders issued by Washington courts;
5. Within existing resources, convene a work group to identify methods to expedite the transfer of information regarding revocation of concealed pistol licenses.

This report responds to the requirements in Laws of 2010, ch. 274, §§ 310, 601 that the AOC report back to the Legislature regarding its progress.

The Washington State Supreme Court Gender and Justice Commission (Commission) was tasked with developing the court policies for AOC. The Commission worked with the judiciary and its court community partners in crafting model policies and procedures that can be adopted or adapted by local courts and can be useful for all branches of government.

¹ This report, like ESHB 2777, uses the term "victim" to refer to the person being subjected to domestic violence by another or seeking protective orders under domestic violence laws. Use of this term is not intended to imply a finding or adjudication of domestic violence where no such finding has occurred. In such cases, "alleged victim" may be the more appropriate term. Similar considerations apply to use of the terms "perpetrator" or "abuser".

Background

Domestic violence cases appear in both criminal and civil courts, and in superior, district, and municipal courts. In criminal court, no-contact orders are issued when a person is charged with domestic violence and are used to protect the victim and prevent the defendant's contact with the victim. The order exists while the criminal case is open and can be extended past sentencing. At times, civil protection orders are sought as an additional safety tool for a person who is at risk of being harmed by a partner or family member or to ensure that an order is in place if a criminal case is resolved.

No-contact and protection orders have been found to be an effective tool in helping to protect victims of domestic violence. This protection can be eroded, though, by the existence of multiple orders for the same parties. Law enforcement officers sometimes find themselves having to decipher the orders when there are conflicting restrictions or modifications, both because of different dates on the orders and because they are issued out of different courts. As a result, law enforcement can have difficulty trying to determine which order to enforce. This can result in no enforcement of such orders. This is not an effective solution, because often the two involved parties maintain contact with each other.

Domestic violence involves people in relationships. Relationships are complex and multi-faceted. For various reasons, parties approach the courts to modify or rescind existing orders. This can add to the complication of conflicting orders, because a modified order now exists in addition to the original order.

There are many reasons why victims approach the bench requesting modification or rescission of a no-contact order. In many situations, the victim does not want to end contact with the defendant but wants the violence to stop. Other reasons for the request include financial issues or parenting concerns. At times, the request is made because the victim is intimidated by the defendant and feels pressured to make the request. While the no-contact order is intended to protect a victim of domestic violence, research has shown that a victim's separation from an abuser actually increases the risk of lethality for the victim. This places the judicial officer in a challenging situation, because he or she is being asked to modify or rescind the order intended to protect the victim from further abuse; and yet, the person making the request is the victim.

In addition to no-contact and protection orders, those found guilty of domestic violence are ordered to surrender their concealed pistol licenses (CPL). However, there is not a consistent process in place to ensure this information is transmitted to the Department of Licensing (DOL). DOL is the agency designated by the Federal government to manage the state database that maintains and updates revocations of CPL's. Delay

can also occur in the transfer of information from DOL to the Washington State Patrol, which then provides it to local law enforcement agencies.

Process and Accomplishments

The Gender and Justice Commission became acutely aware that effective implementation of the bill would require the broad involvement of judicial officers, court personnel, county clerks, advocates, prosecutors, the defense and family law bar, and law enforcement. A multi-tiered approach to information gathering was implemented.

Four surveys were developed and distributed to:

1. prosecutors, defense, and family law attorneys;
2. judicial officers, court personnel, and county clerks;
3. law enforcement; and
4. advocates.

The judicial officer, county clerk, and court administrator/manager listservs were used to distribute the court survey. The Washington Association of Prosecuting Attorneys, Washington State Bar Association Family Law Division, the Washington Defender's Association, Washington State Coalition Against Domestic Violence, and the Washington State Association of Sheriffs and Police Chiefs were the points of contact for distribution of the survey to their constituents.

Over 1,000 surveys were sent out and approximately 300 were returned.

The entities above were invited to attend one of fifteen regional meetings held around the state. Nearly 500 people participated in those meetings. Most meetings included representatives from the bar, bench, clerk's offices, court staff, advocates, and law enforcement. Rich, substantive discussion took place from many perspectives.

In October 2010, a smaller group of stakeholders met, reviewed the information obtained from the survey and the regional meetings, and began crafting solutions.

The AOC is pleased to report the following progress since Laws of 2010, Ch. 274 became effective just over six months ago:

- With the guidance of the Supreme Court's Pattern Forms Committee and the Gender and Justice Commission, the AOC modified the law enforcement information form used by persons seeking ex parte domestic violence protection orders to prompt disclosure of information regarding disability, brain injury, or impairment of the person to be restrained;

- With the guidance of the Pattern Forms Committee and the Gender and Justice Commission, the AOC has developed a pattern form for all no-contact orders issued under Title 10.99 RCW and will disseminate the form for use throughout the state. A copy of the order is included as **Appendix A**;
- A model policy for victims to request rescission or modification of a no-contact order was drafted. The draft model policy was distributed for comment to all those who attended the regional meetings. The original draft was revised based on their feedback and then presented to the trial court associations created under RCW 2.16 and 3.70 for final review and approval. The model policy and the associated new pattern forms are included as **Appendix B**.
- Based in part on information received during the regional workshops, the work of crafting policies for reducing duplicative and conflicting no-contact and protection orders is in progress. The next meeting is scheduled for the first part of January 2011.
- Due to resource constraints, the Section 601 work group recommendations for expediting the transfer of information regarding revocation of concealed pistol licenses have not yet been developed. Stakeholders are still working on developing consistent practices for notifying DOL about surrendering concealed pistol licenses. Each county has been contacted regarding its current practice for notifying DOL when a pistol license is surrendered. Meetings will take place starting in January 2011, and a final report of recommendations is anticipated to be completed by May 2011.

Summary

ESHB 2777 has afforded an opportunity for cross system and agency collaboration which in turn has created a model for joint problem solving. The Administrative Office of the Courts and the Gender and Justice Commission look forward to continuing their work on these topics. A final report will be delivered by December 1, 2011.

APPENDIX A

<div style="text-align: right; border-bottom: 1px solid black; margin-bottom: 5px;">_____ Court of Washington</div> for _____ _____ Plaintiff vs. _____ Defendant (First, Middle, Last Name)

No.

- Pre-Trial Post Conviction
 Replacement Order (paragraph 10)

Domestic Violence No-Contact Order

(clj=NOCON, Superior cts =ORNC)
 Clerk's action required: Para 9

No-Contact Order

1. Protected Person's Identifiers:

 Name (First, Middle, Last)

 DOB Gender Race

If a minor, use initials
 instead of name, and
 complete a Law
 Enforcement Information
 Sheet (LEIS).

Defendant's Identifiers:

Date of Birth	
Gender	Race

2. Defendant:

- A. do not cause, attempt, or threaten to cause bodily injury to, assault, sexually assault, harass, stalk, or keep under surveillance the protected person.
- B. do not contact the protected person, directly, indirectly, in person or through others, by phone, mail, or electronic means, except for mailing or service of process of court documents through a third party, or contact by the defendant's lawyers.
- C. do not knowingly enter, remain, or come within _____ (1,000 feet if no distance entered) of the protected person's residence, school, workplace, other: _____.
- D. other: _____

3. Firearms and Weapons, Defendant:

- do not obtain or possess a firearm, other dangerous weapon or concealed pistol license. (Pre-Trial, RCW 9.41.800. See findings in paragraph 7, below.)
- do not obtain, own, possess or control a firearm. (Post Conviction or Pre-Trial, RCW 9.41.040.)
- shall **immediately surrender** all firearms and other dangerous weapons within the defendant's possession or control and any concealed pistol license to the following law enforcement agency: _____ (Pre-Trial Order, RCW 9.41.800.)

4. This no-contact order expires on: _____. Five years from today if no date is entered.

Warning: Violation of the provisions of this order with actual notice of its terms is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony. **You can be arrested even if the person protected by this order invites or allows you to violate the order's prohibitions.** You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order upon written application. (Additional warnings on page 2 of this order.)

Findings of Fact

5. Based upon the record both written and oral, the court finds that the defendant has been charged with, arrested for, or convicted of a domestic violence offense, and the court issues this Domestic Violence No-Contact Order under chapter 10.99 RCW to prevent possible recurrence of violence.
6. The court further finds that the defendant's relationship to a person protected by this order is an Intimate partner (former/current spouse; parent of common child; or former/current cohabitants as intimate partners) or Other family member as defined by Ch. 10.99 RCW: _____.
7. (Pretrial Order) For crimes not defined as a serious offense, the court makes the following mandatory findings pursuant to RCW 9.41.800: The defendant used, displayed, or threatened to use a firearm or other dangerous weapon in a felony. The defendant is ineligible to possess a firearm due to a prior conviction pursuant to RCW 9.41.040; or Possession of a firearm or other dangerous weapon by the defendant presents a serious and imminent threat to public health or safety, or to the health or safety of any individual.

Additional Warnings to Defendant. This order does not modify or terminate any order entered in any other case. The defendant is still required to comply with other orders.

Willful violation of this order is punishable under RCW 26.50.110. State and federal firearm restrictions apply. 18 U.S.C. § 922(g)(8)(9); RCW 9.41.040.

Pursuant to 18 U.S.C. § 2265, a court in any of the 50 states, the District of Columbia, Puerto Rico, any United States territory, and any tribal land within the United States shall accord full faith and credit to the order.

Additional Orders

8. Civil standby: The appropriate law enforcement agency shall, at a reasonable time and for a reasonable duration, assist the defendant in obtaining personal belongings located at: _____.
9. The clerk of the court shall forward a copy of this order on or before the next judicial day to: _____ County Sheriff's Office Police Department where the case is filed, which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.
10. This order replaces all prior no-contact orders protecting the same person issued under this cause number.

Dated: _____ in open court with the defendant present.

I acknowledge receipt of a copy of this order:

Judge/ Pro Tem/Court Commissioner

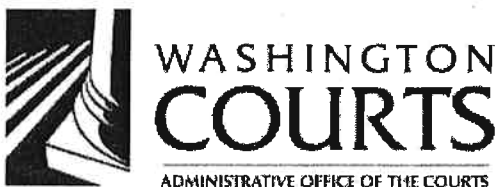
Defendant

The protected person shall be provided with a certified copy of this order.

I am a certified or registered interpreter or found by the court to be qualified to interpret in the _____ language, which the defendant understands. I translated this order for the defendant from English into that language.

Signed at (city) _____, (state) _____, on (date) _____.

Interpreter: _____ print name: _____



APPENDIX B

Washington State Administrative Office of the Courts Model Policy for Victims' Request for Rescission or Modification of No-Contact Orders

Courts should have written instructions explaining the process for requesting a rescission or modification of the no-contact order. Instructions should be available in multiple languages in accordance with local demographics.

Instructions for the motion to rescind or modify should include notice to the moving party victim² about factors that the court will consider when deciding whether to rescind or modify the order. Those factors may include but are not limited to: whether the victim has had a chance to make alternate plans for safety, the status and nature of the criminal proceeding(s) against the defendant, the defendant's compliance with court instructions and sentence, and other risk factors.

Instructions for completing the request should also include information about local domestic violence victim advocacy programs and may offer a strong recommendation that the petitioner consult with a domestic violence advocate prior to the hearing.

Each court should provide forms for making a rescission or modification request, granting or denying the hearing, and granting or denying the request for rescission or modification. The Washington State Administrative Office of the Courts (AOC) has developed model forms which courts are encouraged to use. Those forms include:

- Motion to modify or rescind a no-contact order (completed by moving party victim). (See below.)

² This model policy, like Laws of 2010, ch. 274 (ESHB 2777), uses the term "victim" to refer to the person being subjected to domestic violence by another or seeking protective orders under domestic violence laws. Use of this term is not intended to imply a finding or adjudication of domestic violence where no such finding has occurred. In such cases, "alleged victim" may be the more appropriate term. Similar considerations apply to use of the terms "perpetrator" or "abuser".

- Notice of hearing (completed by moving party). (See below.)
- Denial of hearing (completed by court). (See below.)
- Findings and Order on motion to modify or rescind (completed by court). (See below.)
- New no-contact order (completed by court). (See Appendix A).

Each court should determine the point of access for the petitioner's request. This could be the prosecutor's office, the defense, advocacy agency, the court, or a combination of these points of access. Courts are encouraged to consider offering multiple entry points to ensure victims have broad and easy access to this process and to minimize potential conflicts of interest.

Regardless of the process for access, all court staff, prosecutors, defense and family law attorneys, advocates, and clerk's offices should know the rescission and modification process.

Courts should determine a scheduling mechanism to ensure that no-contact order rescission and modification hearings happen within a reasonable time following the request, for example through a regularly scheduled calendar for rescission and modification hearings.

Each court is strongly encouraged to develop criteria for granting or denying a hearing. The AOC will develop model criteria, and courts are encouraged to adopt these criteria.

A judicial officer may or may not require a safety plan as a precondition for requesting a modification or rescission of a no-contact order. However, a person who wishes to rescind or modify a no-contact order is recommended to have a safety plan in place.

If a hearing is denied, the petitioner should be notified in writing of the reasons for the denial.

If a hearing is granted, all parties should be notified of the date, time, and place of the hearing.

If a no-contact order is modified, a new no-contact order should be issued stating that it replaces a prior order and that notification will be sent to law enforcement.

If the no-contact order is rescinded, law enforcement should be notified.

_____ Court of Washington
For _____

No. _____

Plaintiff

vs.

Defendant (First, Middle, Last Name, DOB)

**Protected Person's Motion to
Modify/Rescind Domestic Violence
No-Contact Order
(MT)
(Clerk's Action Required)**

I, _____ (name), am the person protected in a Domestic Violence No-Contact Order that the court issued against the defendant. I request that the court enter an order to modify (replace) rescind the Domestic Violence No-Contact Order signed on _____ (date).

The court should modify/rescind the order referenced above **because:**

The court should modify the terms and conditions of the order referenced above, **as follows:**

I understand that if the court grants my motion to modify, the court will issue a new Domestic Violence No-Contact Order that will replace the order I want to modify.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at _____ (city) in _____ (state) on _____ (date).

Signature of Protected Person

Type or Print Name

Court of Washington	
For _____	

Plaintiff	
vs.	

Defendant (First, Middle, Last Name, DOB)	

No. _____

Notice of Hearing
 (NTHG)
 (Optional Use)
 (Clerk's Action Required)

To: _____, Protected Person, and:
 Defendant, Prosecuting Attorney, Defense Attorney,
 Other: _____

The Protected Person filed a motion for an order to modify (replace) rescind the Domestic Violence No-Contact Order signed on _____ (date).

The court will hear argument on this matter on _____ (date), at _____ a.m./p.m. at _____ (location) to determine whether the requested relief should be granted.

Dated: _____

County Clerk

By: _____
 Deputy Clerk

_____ Court of Washington
For _____

No.

Plaintiff

vs.

Defendant (First, Middle, Last Name, DOB)

Order Denying Hearing

(ORDYMT)

(Optional Use)

(Clerk's Action Required)

To: _____, Protected Person, and:
Defendant, Prosecuting Attorney, Defense Attorney,
Other: _____

The court received the protected person's motion for an order to modify (replace) rescind
the Domestic Violence No-Contact Order signed on _____ (date).

The court reviewed the motion and declaration, and the court records, and finds that:

Therefore, the court denies the protected person's request for a hearing and denies the motion
to modify (replace) or rescind. The Domestic Violence No-Contact Order referenced above
remains in effect.

Dated: _____

Judge/Pro Tem/Court Commissioner

_____ Court of Washington
For _____

Plaintiff

vs.

Defendant (First, Middle, Last Name, DOB)

No.

**Order re Motion to Modify/
Rescind Domestic Violence No-
Contact Order**

Denied (ORDYMT)

Granted (ORGMT)

(Clerk's action required)

The court received _____ (name of protected person)'s motion for an order to modify (replace) rescind the Domestic Violence No-Contact Order signed on _____ (date).

Based upon the motion, declarations, and testimony, if any, and the relevant court records, the court:

denies the motion.

grants the motion, and

replaces the order referenced above with a new Domestic Violence No-Contact Order, filed separately.

Or,

rescinds the Domestic Violence No-Contact Order referenced above.

The clerk of court shall forward a copy of this order that rescinds on or before the next judicial day to: _____ County Sheriff's Office

_____ Police Department **where the case is filed**

which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

Dated: _____

Judge/Pro Tem/Court Commissioner

I acknowledge receipt of a copy of this Order:

I acknowledge receipt of a copy of this Order:

Protected Person

Defendant

Type or Print Name

Type or Print Name

Or re MT Mod/Rescind DV NCO (ORDYMT, ORGMT) – Appendix B-Page 6

NC 02.0800 (1/2011) - RCW 10.99.040(7)