

Evolving Practices for a More Comprehensive Response to Domestic Violence

E2SHB 1517 Domestic Violence Risk Assessment Work Group Report to the Washington State Legislature and Governor Jay Inslee

“For those [domestic violence] survivors who seek to engage with the criminal-legal system, we should make an effort to improve that system and make it more responsive to their needs...and for those survivors who do not seek to engage, we need to create alternative pathways so that they can access safety.”

- Caroline Bettinger-Lopez (Former White House adviser on violence against women)

October 30, 2020

To the Legislature and Governor Inslee:

It is the honor of the E2SHB 1517 Domestic Violence Risk Assessment Work Group to present the requested report to the Legislature. After over a year of collaboration, the work group co-chairs wish to acknowledge the fine work of each of the active work group members.

The work group was supported by staff from the Administrative Office of the Courts (AOC) and the Supreme Court's Gender & Justice Commission.

The work group members look forward to working with the Legislative, Executive, and Judicial branches to enable the recommendations for substantial improvements to responses essential for the protection of victims of domestic violence and our communities around the State of Washington.

A handwritten signature in black ink, appearing to read "Mary Logan", written over a horizontal line.

JUDGE MARY LOGAN
E2SHB 1517 Work Group Co-Chair
Spokane Municipal Court

A handwritten signature in blue ink, appearing to read "Eric Lucas", written over a horizontal line.

JUDGE ERIC LUCAS
E2SHB 1517 Work Group Co-Chair
Snohomish County Superior Court

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EXECUTIVE SUMMARY

Despite Washington's "clear public policy to prevent domestic violence,"¹ domestic violence remains a prevalent and serious public health and safety issue in Washington State. The number of people affected is sobering:

- In 2019, there were 56,532 domestic violence incident reports to law enforcement.²
- In the state fiscal year ending June 30, 2017, 42 domestic violence shelter and advocacy programs in Washington State served 24,692 survivors of domestic violence and their children, including 5,672 who used emergency shelter. Shelter programs received 97,688 crisis hotline and information/referral calls.³

The COVID-19 pandemic appears to have exacerbated the domestic violence emergency in Washington.⁴ Shelter in place orders and the lack of in-person school attendance have increased the danger to victims. Urgent action is needed to prevent and respond to domestic violence in Washington State.

Over the past four decades, the Washington State Legislature has recognized "domestic violence as a serious crime against society" and the importance of assuring "the victim of domestic violence the maximum protection from abuse which the law

¹ *Danny v. Laidlaw Transit Services*, 165 Wn.2d 200, 198 P.3d 128 (2008).

² See <https://www.waspc.org/assets/CJIS/crime%20in%20washington%202019-small.pdf> at p. 65.

³ Washington State Emergency Domestic Violence Shelter and Supportive Services, Washington State Department of Social and Health Services (2017), <https://wscadv.org/wp-content/uploads/2016/12/DVDATA.FY17.pdf>.

⁴ See e.g. "Domestic violence deaths in King County quadrupled this year over 2019," *King 5 News* (October 1, 2020), available at <https://www.king5.com/article/news/local/4-times-more-domestic-violence-related-deaths-in-king-county-since-last-year/281-bc3a19e8-e0bd-4552-9f9d-bb570660f006>. See also, Boserup, B., McKenney, Mark., Elkbuli, A., "Alarming trends in US domestic violence during the COVID-19 pandemic" (2020), available at <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=4536>.

and those who enforce the law can provide.”⁵ It is in this vein of protecting victims and promoting offender accountability that policies such as mandatory arrest were implemented, and that risk and lethality assessments are being considered within the justice system for use in domestic violence cases. Now, the Legislature has asked this work group to consider how “risk assessment can best be used to improve the response to domestic violence offenders and victims, and find effective strategies to reduce domestic violence homicides, serious injuries, and recidivism that are a result of domestic violence incidents in Washington State.”⁶

Unfortunately, there are no easy answers to solve domestic violence, nor is the use of risk assessment tools without controversy. In addition to concerns about a risk assessment tool algorithmic compounding of bias,⁷ these tools are largely offender-focused with the aim of preventing recidivism. If the goal is prevention of domestic violence, the sole focus on “maximum protection” limits options and services for domestic violence survivors, who have the greatest needs and barriers of any group in the legal system, affecting every aspect of their lives: family, health care, credit, housing, education, and access to essential governmental benefits and services.⁸

While we find that that domestic violence-specific considerations can be helpful when assessing risk in certain contexts that will be discussed within this report, we

⁵ RCW 10.99.010, available at <https://apps.leg.wa.gov/RCW/default.aspx?cite=10.99.010>.

⁶ Laws of 2019, ch. 263.

⁷ E.g. Mayson, Sandra. “Bias In, Bias Out.” *The Yale Law Journal* (2019). Additional resources cited on p. 16 of this report.

⁸ Washington State Supreme Court, Civil Legal Needs Study (2015), p. 13, available at, http://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf.

propose a more comprehensive system response to domestic violence that goes beyond risk assessment, which includes:

- **The collection of accurate Washington State data about domestic violence cases,**⁹ including law enforcement and public health response,¹⁰ to promote transparency and for ongoing research and evaluation;
- **Expand support for victims/survivors,** both with a victim-centered system response and to address other basic and legal needs;
- **Increase access to training and resources for stakeholders,** including imposition of mandatory continuing education requirements;¹¹
- **Support prevention-focused options for perpetrators of domestic violence,** with earlier opportunities for intervention;
- **Continued focus on enforcement of firearms surrender;**
- **Adopt domestic violence-specific considerations** into the criminal court rules for reference by judges making pretrial release decisions; and
- **Utilize domestic violence screening tools** in civil legal and extra-legal settings to help professionals identify victims and promote earlier connection with services.

Furthermore, removal of or amendments to Washington's mandatory arrest law should only be considered in concert with additional study undertaken by an appropriate research entity, more robust supports, and expanded education requirements and opportunities for stakeholders.

⁹ This data collection should also include calls/reports that are DV-related (e.g. stalking, harassment, sexual assault) as not all 911 callers identify DV when seeking intervention.

¹⁰ See e.g. Kafka JM, et al. "Fatalities related to intimate partner violence: towards a comprehensive perspective." *Inj Prev* 2020; 0:1–8. doi:10.1136/injuryprev-2020-043704.

¹¹ This education must also be evidence-based and led by experts in the field of domestic violence.

INTRODUCTION

Background and Report Objectives

This work group has been asked to consider risk assessments to promote victim and public safety.¹² The work of this E2SHB 1517 Domestic Violence Risk Assessment Work Group builds on the recommendations of the previously-established Section 8 Work Group, and we must summarize their findings to put our recommendations in context. In the report entitled *Domestic Violence Risk Assessment*¹³ that was submitted to the Legislature and Governor Inslee in 2018, in addition to providing extensive information related to the research behind risk assessments, the work group concluded that:

“[r]esearch on risk assessment for domestic violence perpetrators is critical to accumulate knowledge on risk assessment best practices and to promote evidence-based strategies in response to domestic violence across the State of Washington.”

The report recommendations included the following:

- Invest in ongoing research on risk assessments;

¹² Leading up to the passage of the original convening legislation (E2SHB 1163) for the work groups in 2017, there was media coverage and public testimony in the Legislature related to domestic violence homicides where the perpetrators had a history of law enforcement and court involvement. **Please note that this description of media coverage and testimony contains graphic descriptions of domestic violence.** On March 14, 2017, Richard Casares testified in support of E2SHB 1163 after his daughter, Marcelina Briones, was murdered by her boyfriend who was out on bail after being charged with assault against her. <http://www.justicefornativewomen.com/2017/03/marcelina-briones-beaten-to-death-by.html#!/2017/03/marcelina-briones-beaten-to-death-by.html>. At that same legislative hearing, Lieutenant Edward Striedninger of the Seattle Police Department testified about a case where the unit responded to incidents of domestic violence on multiple occasions between the same victim and perpetrator, arresting the perpetrator each time. After an arrest, he was released and set fire to the victim’s house, which killed her children. In September 2016, *The Seattle Times* reported on the murder of Tabitha Apling by her former boyfriend, who had an extensive history of domestic violence convictions, while a no-contact order against him was in place. <https://www.seattletimes.com/seattle-news/crime/woman-fatally-shot-in-federal-way-after-argument-with-ex-boyfriend-police-say/>.

¹³ http://www.courts.wa.gov/content/publicUpload/GJCOM/DV_Risk_Assessment_Sec8.pdf.

- Require the use of domestic violence risk assessment tools that rely on actuarial risk assessments with the highest degree of predictive accuracy that are validated in Washington;
- Collect accurate Washington State data about domestic violence cases by refining the domestic violence definition to distinguish between intimate partners and other family or household members;¹⁴ mandating enhanced data collection; and monitoring data collection and assessment processes established in the new Washington Administrative Code governing Domestic Violence Perpetrator Treatment;¹⁵
- Require reassessment of risk throughout the course of legal proceedings;
- Create statewide domestic violence risk/lethality tool for use by law enforcement at the scene;
- Fund research to better understand the impacts of mandatory arrest laws in Washington;
- Consider bias prior to adoption of any risk assessment tool;
- Adopt a risk assessment tool for use by victims and victim advocates filing for civil protection orders and fund study of efficacy of such tool;
- Expand access to information for judges;
- Fund Washington courts to implement firearms review calendar, and require that any court with such a review calendar use a validated risk assessment tool;
- Fund adequate education and access to resources in order to improve domestic violence response; and

¹⁴ This was also a recommendation made by the Domestic Violence Perpetrator Treatment (Section 7) Work Group convened by E2SHB 1163. See “Domestic Violence Perpetrator Treatment: A Proposal for Integrated System Response (ISR),” available at http://www.courts.wa.gov/content/publicUpload/GJCOM/DV_Perpctrator_Treatment_Sec7.pdf.

¹⁵ Washington Administrative Code Title 388, Chapter 60B, available at <https://app.leg.wa.gov/wac/default.aspx?cite=388-60B>.

- Share best practices and promising practices among jurisdictions and provide supported/funded access to professional independent evaluators so that data can be widely shared, evaluated, and monitored.

Since the Section 8 Work Group Report was submitted in 2018, the Washington State Legislature has taken some steps toward implementing some of the Section 8 Work Group’s recommendations, including:

- Refinement of the domestic violence definition to include differentiation between intimate partner violence and violence between other family or household members.¹⁶ The refinement was not intended to substantively change the definition and was to distinguish between categories of domestic violence “to facilitate discrete data analysis regarding domestic violence by judicial, criminal justice, and advocacy entities.”¹⁷
- Directing Washington State University to develop a risk assessment tool to be used by the Department of Corrections (DOC) to predict future domestic violence as part of the current risk, needs, and responsivity assessment process.¹⁸
- Allocating funding to the Administrative Office of the Courts for fiscal year 2021 for development of a domestic violence risk assessment instrument that “(a) [u]ses information from the relevant court records and prior offenses to predict the likelihood of a domestic violence incident; and (b) [d]etermines whether law enforcement risk data and domestic violence supplemental forms are useful in determining reoffense.”¹⁹

Additionally, the Legislature reconvened the Domestic Violence Risk Assessment Work Group pursuant to E2SHB 1517.²⁰ In passing E2SHB 1517, which was signed into law on May 7, 2019, the Legislature highlighted the significance of domestic violence prevention:

¹⁶ Laws of 2019, ch. 263.

¹⁷ *Id.* at sec. 202.

¹⁸ *Id.* at sec. 401(1) and (2).

¹⁹ Laws of 2020, ch. 357, sec. 113(23).

²⁰ Laws of 2019, ch. 263, sec. 803.

“Given the pervasiveness of domestic violence and because of the link between domestic violence and many community issues including violent recidivism, victims and offenders are owed effective treatment and courts need better tools. State studies have found domestic violence crimes to be the most predictive of future violent crime.”²¹

Consistent with this legislative purpose to continue to study how and when risk assessment can best be used to improve the response to victims and offenders and to reduce domestic violence homicides, serious injuries, and recidivism, this E2SHB 1517 work group was directed to:

- a. Research, review, and make recommendations on whether to amend mandatory arrest laws; whether alternative arrest statutes should incorporate risk assessment; and what training for law enforcement would be necessary to implement an alternative to mandatory arrest;
- b. Research, review, and make recommendations on implementation of previous work group recommendations;
- c. Monitor, evaluate, and provide recommendations on the development and use of the risk assessment tool by Washington State University for the Department of Corrections; and
- d. Provide recommendations on other items deemed appropriate by the work group.

The initial due date for the report was June 30, 2020; however, due to the COVID-19 pandemic and associated delays to work group activities, the work group communicated its intended submission of the reports by October 30, 2020.²²

²¹ *Id.* at sec. 101.

²² Please refer to Appendix A: Letter dated May 6, 2020, from the E2SHB 1517 DV Work Groups co-chairs to Representative Roger Goodman regarding the impact of COVID-19 on work group activities.

Work Group Convener: The Washington State Supreme Court Gender and Justice Commission

This legislative work group was co-chaired by Judge Eric Lucas of Snohomish County Superior Court and Judge Mary Logan of Spokane Municipal Court on behalf of the Washington State Supreme Court Gender and Justice Commission. Judge Marilyn Paja, Co-Chair of the HB 1163 work groups and also Co-Chair of the Gender and Justice Commission, was also actively involved with the work group, including leading the ad hoc CrR 3.2 subcommittee.²³

The Washington State Gender and Justice Commission (GJC) was established by the Washington Supreme Court in 1994 to continue to monitor and implement recommendations from the report, *Gender and Justice in the Courts, Washington State, 1989* in order to reduce and eliminate gender bias in our state.²⁴ In order to gain a better understanding of gender bias in the courts today, the Commission is currently evaluating the status of the recommendations from the 1989 Report and undertaking further study in new priority areas with a focus on the intersection of gender and race, poverty, and other identities.

The Court has renewed the Commission every five years since 1989, most recently in 2020. The purpose of the GJC is to identify concerns and make recommendations regarding the equal treatment of all parties, attorneys, and court

²³ Please refer to discussion on pp. 46-52 of this report.

²⁴ In 1987, the Washington State Legislature tasked the Administrative Office of the Courts with developing measures to prevent gender bias in the state court system. After two years of research, public hearings, and surveys, the Gender and Justice Task Force concluded that gender bias existed in the Washington State court system and described the extent of that bias along with recommendations for change in its final report, *Gender and Justice in the Courts, Washington State, 1989*.

employees in the State courts, and to promote gender equality through researching, recommending, and supporting the implementation of best practices; providing educational programs that enhance equal treatment of all parties; and serving as a liaison between the courts and other organizations in working toward communities free of bias.

It is because of this experience, mission and capacity that the GJC was honored to be selected as the convenor of the Domestic Violence Work Groups pursuant to E2SHB 1517. Recommendations made in this report are those of the Work Group and are not the expression of the Gender and Justice Commission, nor its chairs and members, except insofar as individual members may also have participated in the Work Group.

Work Group Designees and Other Contributors

The work group consisted of stakeholders from across the State of Washington, representing a broad range of perspectives. The following work group members were statutorily designated:

Washington State Coalition Against Domestic Violence: Kelly Starr, Tamaso Johnson

Washington State University, Criminal Justice Program: Dr. Zachary Hamilton²⁵

Department of Corrections: Mark Kucza; Sheila Lewallen

Department of Social and Health Services/Treatment providers: Amie Roberts

Washington Association of Sheriffs and Police Chiefs/City Law Enforcement: Chief Jonathan Ventura (Arlington Police Department)

²⁵ Dr. Hamilton transferred to the University of Nebraska-Omaha prior to the conclusion of the work groups.

Superior Court Judges Association: Judge Sabrina Ahrens (Pierce County Superior Court)

District and Municipal Court Judges Association: Judge Patti Connolly Walker (Spokane County District Court); Judge Virginia Amato (King County District Court)

Washington State Association of Counties: Commissioner Mary Kuney (Spokane County Commissioner)

Washington Association of Prosecuting Attorneys: David Martin (King County Prosecuting Attorney's Office)

Washington Defender Association: Steven Lewis (Kitsap County Office of Public Defense)

Washington Association of Criminal Defense Lawyers: Heather Straub (Law Offices of Heather R. Straub PLLC)

Association of Washington Cities: Sharon Swanson; Brie Ann Hopkins (City of Bellevue)

Washington State Office of Civil Legal Aid: Dana Boales; Jennifer Ammons (Northwest Justice Project)

Family Law Executive Committee of the Washington State Bar Association: Jacqueline Jeske (Jeske Dispute Resolution)

County Law Enforcement: Sergeant Andrew Stockman (Spokane County Sheriff's Office)

Court Administrators: Serena Daigle (District and Municipal Court Management Association/King County District Court); Pam Hartman-Beyer (Washington Superior Court Administrators/Thurston County Superior Court)

The victim/survivor perspective was represented by several participants who were also survivors of domestic violence and statewide victim/survivor perspectives were shared by WSCADV.

Additional participants on the work group included:

Kathryn Akeah (Administrative Office of the Courts, Court Program Analyst-Tribal State Court Consortium)

Kelley Amburgey-Richardson (Administrative Office of the Courts, Senior Court Program Analyst- Washington State Supreme Court Gender and Justice Commission)

David Baker (King County Prosecuting Attorney's Office)

Kelly Boyle (Washington State Department of Children, Youth, and Families)

Theresa Cronin (Washington State Supreme Court Minority and Justice Commission)

Cynthia Delostrinos (Administrative Office of the Courts, Manager – Supreme Court Commissions)

Dr. Amanda Gilman (Washington State Center for Court Research)

Annie Murphey (Spokane Regional Domestic Violence Coalition)

Doris O'Neal (YWCA of Seattle, King and Snohomish Counties)

Carmen Pacheco-Jones (Spokane Regional Law & Justice Council's Racial Equity Committee)

Angel Tomeo Sam (Spokane Regional Law & Justice Council's Racial Equity Committee)

Laura Jones served as contract staff coordinator and primary report editor for this work group. Additional coordination and administrative support were provided by staff from the Administrative Office of the Courts, Supreme Court Commissions, including Michelle Bellmer and Moriah Freed.

Work Group Activities and Consensus Building

Throughout the course of this work group, three in-person work group meetings were held²⁶ and the following topics were discussed:

- **September 17, 2019:** Introduction to key stakeholders and participants; discussion of questions posed by legislature; issues identified; tentative work plan established
- **November 7, 2019:** Presentation from Department of Corrections/Washington State University re: post-conviction risk tool development; overview of validated DV risk assessment tools provided by WSCCR; discussion re: priority setting; discussion re: mandatory arrest
- **January 7, 2019:** Update from Department of Corrections on risk tool development; mandatory arrest research discussion with information from WSCCR; WSIPP overview on meta-analysis re: mandatory arrest; discussion re: advocacy for DV survivors; presentation from the ACLU re: bias in risk tools

Because in-person meetings were not possible due to the COVID-19 pandemic, four additional Zoom meetings were held and the following topics were discussed:

²⁶ It was initially anticipated that there would be four in-person meetings throughout the course of the project; however, due to the COVID-19 pandemic and related safety concerns, it was impossible to facilitate the final in-person meeting.

- **June 23, 2020:** Update on the status of risk tool development for Department of Corrections; mandatory arrest; CrR 3.2 subcommittee proposal
- **August 18, 2020:** Discussion of proposals related to mandatory arrest; provision of services to victims and perpetrators; and prevention
- **September 29, 2020:** Discussion and feedback re: Working Draft of work group report

Additionally, the work group communicated frequently via listserv, created a shared drive for articles and research, and held monthly work group conference calls in October, November, January, and February. Topics addressed on these calls included the criminal justice process and points where risk assessments are needed; mandatory arrest; whether to recommend the use of an existing tool or new tool development; possible amendment to court rules concerning pretrial release (CrR 3.2 and CrRLJ 3.2); and implicit bias.

In the recommendations below, the work group reached consensus except where noted otherwise. Consensus was determined by continuous communication by voice and in writing with opportunities for comment. Multiple preliminary drafts of this report were circulated for review and input. Concerns raised or unanswered questions are included in the written discussion below.

Report Organization

After a description of key definitions and acronyms, discussion within the report centers on how to improve and provide a more comprehensive response to domestic violence. First, we discuss risk assessment in the context of the criminal justice system at three phases: initial response; pretrial proceedings; and post-conviction. Next, we discuss improvement of response within civil family law proceedings and extra-legal settings by the use of domestic violence screening tools.

KEY DEFINITIONS & ACRONYM GLOSSARY

This section identifies and defines key terms and concepts that are discussed in the report:

Community-Based Advocates are employed or supervised by community-based domestic violence agencies and are trained to provide assistance and advocacy services, including social service referrals, legal support, temporary housing, safety planning, support groups, etc.²⁷

Legal Advocate means a person employed by a domestic violence program or court system to advocate for victims of domestic violence, within the criminal and civil justice systems, by attending court proceedings, assisting in document and case preparation, and ensuring linkage with the community advocate.²⁸

Lethality Assessment measures the likelihood that a fatality will result from domestic violence.

Risk Assessment “is a procedure whereby we measure some characteristic of a person or situation and then use that information to predict the likelihood of some negative event.”²⁹

²⁷ RCW 70.123.020(1).

²⁸ RCW 70.123.020(9).

²⁹ Moyer, R., Ph.D. Emeritus Prof. of Psychology, Bates College, “Evidence-based Risk Assessment of Domestic Violence Offenders: The State of the Science in 2006.”

Victim/Witness Advocates³⁰ are usually affiliated with law enforcement and/or prosecutors' offices.

B-SAFER	Brief Spousal Assault Form for the Evaluation of Risk
CrR	Criminal Court Rule
DA	Danger Assessment
DOC	Department of Corrections
DV	Domestic Violence
DVIT	Domestic Violence Intervention Treatment
DVSI-R	Domestic Violence Screening Instrument- Revised
ERPO	Extreme Risk Protection Order
IPV	Intimate Partner Violence
LAP	Lethality Assessment Protocol
LEAD	Law Enforcement Assisted Diversion
MMIWG	Missing and Murdered Indigenous Women and Girls
NCO	No-contact order
NIBRS	National Incident-Based Reporting System
ODARA	Ontario Domestic Assault Risk Assessment
WSCCR	Washington State Center for Court Research

³⁰ Pursuant to RCW 7.69.020(6) "Crime victim/ witness program" means any crime victim and witness program of a county or local law enforcement agency or prosecutor's office, any rape crisis center's sexual assault victim advocacy program as provided in chapter 70.125 RCW, any domestic violence program's legal and community advocate program for domestic violence victims as provided in chapter 70.123 RCW, or any other crime victim advocacy program which provides trained advocates to assist crime victims during the investigation and prosecution of the crime.

DV RISK ASSESSMENT & THE CRIMINAL JUSTICE PROCESS

Risk assessment tools are used to “measure some characteristic of a person or situation and then use that information to predict the likelihood of some negative event.”³¹ The use of risk assessments has received much attention recently.³² While the research suggests that the use of a high-quality risk assessment can mitigate biases,³³ there is a concern they that compound systemic biases, particularly when based on

³¹ Moyer, R., Ph.D. Emeritus Prof. of Psychology, Bates College, “Evidence-based Risk Assessment of Domestic Violence Offenders: The State of the Science in 2006.” Please also refer to pp. 19-32 of the E2SHB 1163 Section 8 Work Group Report, “Domestic Violence Risk Assessment,” available at http://www.courts.wa.gov/content/publicUpload/GJCOM/DV_Risk_Assessment_Sec8.pdf for discussion about the research behind risk assessments.

³² See e.g. Chelsea Barabas, Karthik Dinakar and Colin Doyle, “The Problems With Risk Assessment Tools,” *New York Times* (July 17, 2019), available at <https://www.nytimes.com/2019/07/17/opinion/pretrial-ai.html>; Jack Hefernan and Jerzy Shedlock, “Clark County prosecutor calls for changes to law on domestic violence defendants,” *The Columbian* (December 11, 2019), available at <https://www.columbian.com/news/2019/dec/11/clark-county-prosecutor-calls-for-changes-to-law-on-domestic-violence-defendants/>; Cade Metz and Adam Satariano, “An Algorithm That Grants Freedom, or Takes It Away,” *The New York Times* (February 6, 2020), available at <https://www.nytimes.com/2020/02/06/technology/predictive-algorithms-crime.html>.

³³ Monahan, J., & Skeem, J. L. “Risk redux: The resurgence of risk assessment in criminal sanctioning.” *Federal Sentencing Reporter*, 26, 158-166, (2014); Kuncel, N. R., Klieger, D. M., Connelly, B. S., & Ones, D. S. “Mechanical versus clinical data combination in selection and admissions decisions: A metaanalysis.” *Journal of Applied Psychology*, 98, 1060 (2013); Gendreau, P., Little, T., & Goggin, C. “A meta-analysis of the predictors of adult offender recidivism: What works!” *Criminology*, 34, 575-607 (1996); Dawes, R. M., Faust, D., & Meehl, P. E. “Clinical vs. actuarial judgment.” *Science*, 243, 1668-1674 (1989).

criminal history.³⁴ Here in Washington, a recent report outlines the concerns of pretrial risk assessments in general as related to racial bias.³⁵

There are few validated domestic violence tools, none of which have been validated on Washington's population.³⁶ Moreover, "[v]arious forms of intimate partner violence risk assessment predict different outcomes, are intended to be used within different systems, and require different information to complete."³⁷ Within the context of domestic violence, discussion about risk assessment can be confusing, as there are many separate but related concepts. For example, risk assessments and lethality assessments may consider overlapping factors, but they do not measure the same thing; a risk assessment measures the likelihood of re-offense, whereas a lethality assessment measures the likelihood that a homicide will be committed. The most commonly known and widely-used lethality assessment tool is the Lethality Assessment Protocol (LAP).³⁸ These are different than domestic violence screening tools, which are used primarily to

³⁴ E.g. Angwin et. al, "Machine Bias," *Pro Publica* (2016), Available at <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>. At our January 2020 work group meeting, we had the opportunity to hear from Brandon Buskey, Deputy Director of Smart Justice Litigation at the American Civil Liberties Union (ACLU). Key points in his presentation included that risk assessment tools reflect the same values as the decisionmaker, that bias is hard to get rid of, and that recidivism and violence are difficult to measure. Implicit bias is also discussed in the previous DV Risk Assessment (Section 8) Work Group's report at pp. 61-63.

³⁵ See Surur, Intisar and Valdez, Andrea, "Pretrial Reform Task Force: Final Recommendations Report," (2019)

³⁶ Please refer to Appendix B for a summary compiled by the Washington State Center for Court Research (WSCCR) of validated domestic violence risk assessment instruments, organized by phase in the process and by whom the instruments are intended to be used.

³⁷ Messing, Jill Theresa, and Jonel Thaller "The average predictive validity of intimate partner violence risk assessment instruments." *Journal of interpersonal violence*, 28(7): 1537-1558 (2013); Hanson, Robert Karl, Guy Bourgon, and Leslie Helmus. "The validity of risk assessments for intimate partner violence: A meta-analysis." Ottawa, Ontario: Public Safety Canada (2007).

³⁸ This is a tool adapted from the Danger Assessment. Please refer to Appendix C for a sample LAP screening form.

identify domestic violence and better meet the needs of victims through connection with services.

In light of the legislative mandate to Washington State University and Department of Corrections to develop and implement a post-conviction risk assessment tool for felony cases, a preliminary discussion had by the work group centered on establishing work group priorities with regard to where else in the continuum of legal proceedings participants would like to see a risk tool applied or improved response to victims. Emerging from that discussion were three phases of the process: first response (typically by law enforcement); pretrial release determinations by the court; and post-conviction for all courts, including courts of limited jurisdiction.

Law Enforcement/Initial System Response

The initial (law enforcement) response to domestic violence cases was identified as a top priority for focus by the work group because it is the “gateway” to the criminal justice process. This also dovetails with the work group directive to “research, review, and make recommendations on whether to amend mandatory arrest laws; whether alternative arrest statutes should incorporate risk assessment; and what training for law enforcement would be necessary to implement an alternative to mandatory arrest.”

The work group spent significant time considering the issue of mandatory arrest, and there is consensus that it has had unintended negative consequences. However, there are differing views on how to approach any amendments to mandatory arrest. The prevailing view is a strong discomfort with the idea of removing or amending

Washington's mandatory arrest statute, due to the high stakes [increased DV fatalities] and the fear of reversion back to an era where DV was not taken seriously.³⁹ The other view is for a hybrid approach, which would entail the rollout of diversionary and support services prior to amendment of mandatory arrest. That is, that if mandatory arrest is amended, it should be under certain specified (and limited) circumstances, and it would be coupled with immediate access to services for both victims and the accused.

There is clear consensus that we need to adopt a more comprehensive response to domestic violence: better data collection and transparency for evaluation; stronger supports for victims and offenders; more education for system stakeholders; and more focus on enforcement of firearms forfeiture.

Mandatory Arrest

Mandatory arrest laws were implemented in the early 1980s as a public policy response to the critique that domestic violence offenses were not treated as seriously as other crimes, and to reduce domestic violence lethality and re-offense. They were also responsive to concerns that the burden regarding the decision to arrest was on the victim; a perpetrator would only be arrested if the victim signed the citation. This was a huge safety concern because the victim would have to answer to the perpetrator upon their release.

In Minnesota, a 1984 study on the effectiveness of a mandatory arrest policy for domestic violence misdemeanants⁴⁰ found that batterers randomly assigned to

³⁹ Please refer to "Mandatory Arrest" section of this report below.

⁴⁰ Referred to as the "Minneapolis Experiment."

mandatory arrest were less likely to reoffend than those not subject to mandatory arrest.⁴¹ In light of the study's findings, over a period of several years, arrest laws were implemented across the nation.⁴²

Washington's mandatory arrest law, passed in 1984, requires a police officer to arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that the person:

- is 18 years of age or older, AND
- has assaulted a family or household member within the past four hours, AND
 - a felonious assault has occurred, OR
 - an assault has occurred which has resulted in bodily injury to the victim (whether observable to responding officer or not), OR
 - any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death.⁴³

Washington's mandatory arrest statute also contains a primary aggressor provision: "The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every

⁴¹ Sherman, Lawrence W., Berk, Richard A., "The specific deterrent effects of arrest for domestic assault." *American Sociological Review*, 49 (1): 261-272 (1984).

⁴² Domestic violence arrest laws nationwide fall into three categories: **Mandatory** (Alaska, California, Colorado, Connecticut, District of Columbia, Kansas, Louisiana, Maine, Mississippi, Nevada, New York, Ohio, Oregon, Rhode Island, South Dakota, Utah, Virginia, Washington, Wisconsin); **Discretionary** (Alabama, Arizona, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, Texas, Vermont, West Virginia, Wyoming); and **Preferred** (Arkansas, Massachusetts, Montana, Tennessee).

⁴³ RCW 10.31.100(2)(d), available at <https://apps.leg.wa.gov/RCW/default.aspx?cite=10.31.100>.

reasonable effort to consider: A) The intent to protect victims of domestic violence under RCW 10.99.010; (B) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (C) the history of domestic violence of each person involved, including whether the conduct was part of an ongoing pattern of abuse.”⁴⁴

The passage of Washington’s mandatory arrest law was controversial at the time.⁴⁵ Since the implementation of arrest laws, and in conjunction with other strong laws demonstrating legislative commitment to recognizing domestic violence as a “serious crime against society” and assuring “victims the maximum protection from abuse which the law and those who enforce the law can provide,”⁴⁶ reported rates of domestic violence (prior to the COVID-19 pandemic) dropped significantly.⁴⁷ However, research on mandatory arrest, how researchers define it, how laws are written, and how

⁴⁴ It has been raised by those who work with victims that this “primary aggressor” provision can be harmful when law enforcement is not properly trained to recognize DV dynamics and provided with proper assessment tools. Please refer to p. 22 of this report for research regarding dual arrest and victim-defendants.

⁴⁵ See e.g. Himmelsbach, D.E., “Family fights. ‘Nicest people’ going to jail under new law.” (1984); Mitchell, S. “Domestic violence law gets praise” (1984); Frost, M., “Criminal law reports.” Trial News. (1984); Barber, M. A., “New domestic violence law packing the jails.” Seattle Post-Intelligencer (1984); Hendrick, D., “Will sentencing law clog courts? Strict state guidelines mean defendants have little to lose.” The Olympian (n.d.); Unknown, “Opinion: home violence law needs more funding.” (1984).

⁴⁶ See RCW 10.99.010, available at <https://apps.leg.wa.gov/RCW/default.aspx?cite=10.99.010>; RCW 10.31.100, available at <https://apps.leg.wa.gov/RCW/default.aspx?cite=10.31.100>; RCW 10.99.030, available at <https://apps.leg.wa.gov/RCW/default.aspx?cite=10.99.030>; RCW 10.99.045, available at <https://apps.leg.wa.gov/RCW/default.aspx?cite=10.99.045>.

⁴⁷ Bureau of Justice Statistics 1993-2010, “From 1994 to 2010, the overall rate of intimate partner violence in the United States declined by 64%, from 9.8 victimizations per 1,000 persons age 12 or older to 3.6 per 1,000. Intimate partner violence declined by more than 60% for both males and females from 1994 to 2010. From 1994 to 2010, about 4 in 5 victims of intimate partner violence were female.” However, the following publication notes an increase in domestic violence since COVID-19: Boserup, B., McKenney, Mark., Elkbuli, A., “Alarming trends in US domestic violence during the COVID-19 pandemic” (2020), available at <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=4536>.

arrest is practiced vary and make it difficult to draw conclusions about its impact on homicide or arrest rates.⁴⁸

The research also reveals that results are mixed regarding the goal of changing the culture of and response to domestic violence.⁴⁹ Moreover, there have been unintended negative consequences of mandatory arrest, including:

- Disproportionate impact of dual arrest⁵⁰ and victims who are mistakenly identified as the aggressor⁵¹ (victim-defendants)⁵² on LGBTQ people, women, and people of color;
- Removal of victim autonomy;⁵³ and
- Negative victim perceptions of and interactions with the criminal justice system.⁵⁴

⁴⁸ See e.g. Zeoli, A.M., Norris, A., Brenner, H., "Mandatory, preferred, or discretionary: How the classification of domestic violence warrantless arrest laws impacts their estimated effects on intimate partner homicide," 35 *Evaluation Rev.* 129 (2011).

⁴⁹ See e.g. Richard R. Johnson & Mengyan Dai "Police Enforcement of Domestic Violence Laws: Supervisory Control or Officer Prerogatives?" *Justice Quarterly*, 33:2, 185-208 (2014); Scott W. Phillips; James J. Sobol, "Twenty Years of Mandatory Arrest: Police Decision Making in the Face of Legal Requirements," 21 *Crim. Just. Pol'y Rev.* 98 (2010).

⁵⁰ See e.g. Hirschel, D. and Deveau, L. "The impact of primary aggressor laws on single versus dual arrest in incidents of intimate partner violence." *Violence Against Women*, 23(10): 1155-1176 (2017). Please note that this study does not include Washington data.

⁵¹ See e.g. Durfee, A. "Situational ambiguity and gendered patterns of arrest for intimate partner violence." *Violence Against Women*, 18(1):64-84 (2012).

⁵² The term "victim-defendants" refers to domestic violence defendants who are also victims of ongoing abuse by an intimate partner. Victim defendants include survivors of ongoing abuse who used violence in self-defense; used violence for some other reason; or did not use violence and were wrongly arrested. In addition, abusers sometimes force or coerce their partners to engage in other criminal activities. Research indicates an increase in the number and percentage of women arrested for domestic violence offenses around the country, which is significant because research on domestic violence prevalence has shown that the majority of domestic violence survivors are women. Crager, M., Cousin, M., and Hardy, T. "Victim-Defendants: An Emerging Challenge in Responding to Domestic Violence in Seattle and the King County Region," King County Coalition Against Domestic Violence (2003), available at <https://endgv.org/wp-content/uploads/2016/03/victimdefendantfinalreport111.pdf>.

⁵³ Mordini, Nicole Miras. "Mandatory State Interventions for Domestic Abuse Cases: An Examination of the Effects on Victim Safety and Autonomy." *Drake Law Review* (2004).

⁵⁴ For example, in a recent ACLU Report, 88% of survivors surveyed reported that the police sometimes or often did not believe them or blamed them for the violence. Additionally, survivors also reported severe negative consequences for them resulting from police involvement, including criminal charges, immigration/deportation proceedings, involvement with Child Protective Services, or loss of housing, employment, or welfare benefits. "Responses from the Field: Sexual Assault, Domestic Violence, and

These unintended consequences have led to consideration of alternatives to the criminal justice response, including the removal of mandatory arrest, or at least amendments to mandatory arrest in the form of law enforcement interventions leading towards an established diversionary non-jail alternative. This focus has become even more relevant given the current nationwide discussions around race, ending mass incarceration, and reallocating funds from the criminal justice system to other service providers and prevention programs.⁵⁵

The following sections of this report outline steps that must be considered prior to amendment to the mandatory arrest approach. First, research, preferably Washington-specific, should be undertaken to evaluate mandatory arrest, including a disproportionality lens for impact on women, people of color, immigrants, those living in poverty, and LGBTQ people. There should also be a refocus upon victims to create stronger support systems, as well as prevention-focused support for offenders; expanded education requirements for system stakeholders; and continued attention to firearms forfeiture to mitigate the associated increased risk of harm to victims. We want to avoid the confusion that Idaho has experienced following the 2019 *Clarke* decision

Policing” (October 2015), available at https://www.aclu.org/sites/default/files/field_document/2015.10.20_report_-_responses_from_the_field.pdf. Victims can also be threatened with jail time if they do not testify against their perpetrator. Kim Ogg and Miriam Aroni Krinsky, “A Prosecutor Can Jail You For Your Own Good. Say What?” *USA Today* (Jan 13, 2018).

⁵⁵ The Washington State Coalition Against Domestic Violence, along with 45 other sexual assault and domestic violence coalitions nationwide, has made the following statement detailing their commitments to alternatives to the criminal justice system. “Moment of Truth Statement of Commitment to Black Lives” (June 30, 2020), <https://wscadv.org/news/moment-of-truth-statement-of-commitment-to-black-lives/>.

which made it unlawful for police to arrest in misdemeanor crimes, including domestic violence, that occur outside their presence without a signed warrant from a judge.⁵⁶

Research and Data Collection on Law Enforcement Response

Organizations operating based on research have better performance.⁵⁷ Given that there has not been an analysis of the data specific to mandatory arrest in Washington State, research and data collection related to law enforcement's response may provide insight on whether the statute is working as intended, as well as its impact on incarceration rates and subsequent charging, and allow development of meaningful alternatives. This analysis is possible through use of information from the courts and the National Incident-Based Reporting System (NIBRS), which tracks such law enforcement information as arrest decisions and victim-offender relationship and characteristics.⁵⁸ In 2019 the Washington Association of Sheriffs and Police Chiefs granted the Washington State Center for Court Research (WSCCR) access to NIBRS data on a yearly basis.

A more expedient option might be retrieval of data directly from law enforcement; however, although law enforcement agencies are mandated to maintain

⁵⁶ Please refer to Appendix D, a summary compiled by Boise State University that summarizes the consequences and negative impact to victims resulting from the *Clarke* decision.

⁵⁷ See e.g., "Best Practices in Drug Courts", *Drug Court Review*, Volume VIII, Issue 1 (2012). In addition to this kind of ongoing internal review process and performance measures highlighted in this resources, other helpful types of research-related practices include keeping up with advances in the field and implementation research.

⁵⁸ Please refer to the following as examples of analysis that can be conducted based on NIBRS data: Howard Snyder and Carl McCurley, "Domestic Assaults by Juvenile Offenders- Analysis of NIBRS Data," *Juvenile Justice Bulletin* (2008), available at <https://www.ncjrs.gov/pdffiles1/ojdp/219180.pdf>; "An Analysis of Domestic Violence and Arrest Patterns in Vermont Using NIBRS Data" (2012), available at https://www.jrsa.org/awards/winners/13_VT_DomesticViolence.pdf.

records of all reported incidents of domestic violence,⁵⁹ there is currently no standardization of in-the-field DV risk screener data tracked by law enforcement jurisdictions across the state.⁶⁰ If this information was more systematically tracked, it would allow analysis of whether information collected by law enforcement via the LAP or other supplemental forms could allow researchers to identify factors that contribute to an increased likelihood of re-offense. In addition, because the information collected is typically not kept or tracked electronically, retrieval is both difficult and costly.

With the passage of ESSB 6168 in 2020, perhaps some of this law enforcement information will be evaluated in conjunction with the development of a domestic violence risk assessment instrument that “(a) Uses information from relevant court records and prior offenses to predict the likelihood of a domestic violence incident; and (b) Determines whether law enforcement risk data and domestic violence supplemental forms are useful in determining reoffense.”⁶¹

Other related research questions that may be informative to assessing the law enforcement response include: why some jurisdictions have adopted a lethality assessment at the scene and others have not, and whether jurisdictions that do utilize a lethality assessment have a better response to victims than those who do not. It may also be useful to collect and review jail booking data related to domestic violence,

⁵⁹ RCW 10.99.030(10), <https://apps.leg.wa.gov/RCW/default.aspx?cite=10.99.030>.

⁶⁰ Some jurisdictions use the Lethality Assessment Protocol (LAP); all law enforcement in King County uses the DV Supplemental Form; and some jurisdictions do not use a lethality or risk assessment tool.

⁶¹ See p. 13 of ESSB 6168, <https://app.leg.wa.gov/billsummary?BillNumber=6168&Year=2019&Initiative=false>.

potentially including analysis of DV bookings for people who have previously been designated as a victim within court systems.⁶²

As discussed by the work group, the ideal evaluation of law enforcement field data would be two-pronged: 1) capturing historical data, including translating paper files into electronic form, and 2) capturing information electronically moving forward. This would allow an analysis that is both historical and ongoing. This type of evaluation would require funding to a research entity (e.g. WSCCR) and significant funding to law enforcement in order to be implemented. According to WASPC's representative on the work groups, responding to public disclosure requests is already consuming a huge amount of time and resources from law enforcement jurisdictions around the state.

The Administrative Office of the Courts is considering a budget proposal for a full-time research position within the Office of Court Innovation to “focus on research related to race, gender, foreign and signed language groups, and how the courts interact and administer justice to such historically marginalized groups.”⁶³ This evaluation is an “unmet research need” as referenced in the budget proposal, and is research that might be pursued if this position is funded.

A less expensive alternative to implementation of a statewide mandate would be to look at bigger agencies that already have digital records⁶⁴ and pilot an evaluation in

⁶² See Crager, M., Cousin, M., and Hardy, T. “Victim-Defendants: An Emerging Challenge in Responding to Domestic Violence in Seattle and the King County Region,” King County Coalition Against Domestic Violence (2003), available at <https://endgv.org/wp-content/uploads/2016/03/victimdefendantfinalreport111.pdf>.

⁶³ Please refer to Appendix E of this report.

⁶⁴ King County or Spokane County, for example.

those jurisdictions. A statewide DV dashboard could also be created for law enforcement agencies to report their data on an ongoing basis as is done pursuant to the Safety and Access for Immigrant Victims Act⁶⁵ and by WASPC for attempted firearms purchases.⁶⁶

Anticipating concerns about funding limitations, another idea raised is for a research entity (WSCCR) to conduct a literature review of national studies with regard to mandatory arrest. A literature review is both much more limited in research scope and would not focus on our State.

Additionally, a continued focus on improving data collection around Missing and Murdered Indigenous Women and Girls (MMIWG) in DV cases-- including how many open, unsolved cases there are in Washington; whether there were past calls to law enforcement by the victims; and whether mandatory arrest laws were applied in DV-related cases-- is also needed given Washington's large population of Native citizens.⁶⁷ Despite significantly higher homicide rates for Indigenous women,⁶⁸ there is a lack of quality data collection.⁶⁹

⁶⁵ <https://app.smartsheet.com/b/publish?EQBCT=8b24ccbd665b44f8b3c5265176b449ad>.

⁶⁶ <https://www.waspc.org/denied-firearms-transactions>.

⁶⁷ Over 140,000 native citizens live in Washington State alone, and 29 federally recognized tribes are located within the boundaries of our state. American Library Association, "Indigenous Tribes of Seattle and Washington," available at <http://www.ala.org/aboutala/indigenous-tribes-seattle-and-washington>.

⁶⁸ Petrosky E, Blair JM, Betz CJ, Fowler KA, Jack SP, Lyons BH. "Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence" United States, 2003–2014. *MMWR Morb Mortal Wkly Rep* 2017; 66:741–746.

⁶⁹ For example, in 2016 the National Crime Information Center reported 5,712 missing American Indian and Alaska native women and girls, whereas NamUs, the United States Department of Justice's federal missing persons database, only reported 116 cases. National Crime Information Center (2018). Federal Bureau of Investigation; Department of Justice (2018) NamUs, available at <https://www.namus.gov/MissingPersons/Search>. A 2018 report, found that while 71% of American Indians/Alaska Natives live in urban areas, only 506 cases of MMIWG were identified in 71 cities from 1900-2018. "Missing and Murdered Indigenous Women and Girls: A snapshot of data from 71 urban cities

While there has been recognition of the lack of a comprehensive data collection system and the need for the criminal justice system to better serve Native American women,⁷⁰ in the report entitled *MMIWG: We Demand More*,⁷¹ the Urban Indian Health Institute (UIHI) highlighted the most commonly mentioned barriers to addressing this crisis experienced by urban and rural Tribal communities. These most often cited barriers were data (e.g. lack of data sharing across jurisdictions, racial misclassification, and misuse of data), and racism and bias among law enforcement. The UIHI report provides ten community-defined solutions including collaboration between law enforcement, government, and community; training for law enforcement on aspects such as “the missing person process,” human emotions, and Native American culture; respect for the government-to-government relationship; and increased community resources.⁷²

Victim Support

From the victim perspective, the only consistency with law enforcement response to domestic violence is inconsistency. Many victims report negative interactions with

in the United States” (2018), available at <http://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf>.

⁷⁰ See e.g. Laws of 2018, ch. 101 (directing study by the Washington State Patrol) and Laws of 2019, ch. 127 (established liaison positions within the Washington State Patrol for the purpose of improving law enforcement response to MMIWG).

⁷¹ Available at <https://www.uihi.org/resources/mmiwg-we-demand-more/>.

⁷² *Id.*

the police.⁷³ Victims may not report to law enforcement due to some of the following reasons:⁷⁴

- Privacy
- Fear of reprisal
- Desire to protect children
- Desire to protect the offender
- Inefficient or biased police
- Fear of removal of children by child protective services
- Fear of deportation of themselves, their partner, or family members
- Economic consequences, including lost income to the household, threat to job security, and loss of housing or public benefits
- Fear that the police would not believe them or would do nothing
- Fear of arrest by the police

A 2003 Massachusetts study⁷⁵ on victim satisfaction with the justice system response found that while a majority of victims of domestic violence who were surveyed

⁷³ See e.g. T.K. Logan, Ph.D. and Roberta Valente, "Who Will Help Me? Domestic Violence Survivors Speak Out About Law Enforcement Responses," National Domestic Violence Hotline (2019), available at <http://www.thehotline.org/wp-content/uploads/sites/3/2015/09/NDVH-2015-Law-Enforcement-Survey-Report.pdf> (Please note that this study is based on survey responses from people who called the hotline over a one-month period); "Responses from the Field: Sexual Assault, Domestic Violence, and Policing" (October 2015), available at https://www.aclu.org/sites/default/files/field_document/2015.10.20_report_-_responses_from_the_field.pdf.

⁷⁴ *Id.* See also Reaves, Brian A. "Police Response to Domestic Violence, 2006-2015," U.S. Department of Justice (2017), available at <https://www.bjs.gov/content/pub/pdf/prdv0615.pdf#page=1&zoom=auto,-99,792>.

⁷⁵ Hotaling, Gerald and Buzawa, Eve, "Victim Satisfaction With Criminal Case Processing in a Model Court Setting," Department of Criminal Justice, University of Massachusetts (2003), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/195668.pdf>.

supported the actions of the police, many who remained were “profoundly uneasy with existing patterns of aggressive intervention. Our findings indicate that the seriousness of the target incident, the dangerousness of the offender, the extent to which the criminal justice system increased the victim’s sense of control, exposure of the victim to past violence and the extent to which victim preferences were followed all to some extent predicted resulting victim satisfaction.”⁷⁶

In Washington State, the current law governing law enforcement response is deficient in support and resources for victims. Advocates or social workers do not typically respond with police, and few are on call to help.⁷⁷ All that is required under RCW 10.99.030 is to provide a pamphlet of phone numbers for resources to call:

The officer shall advise victims of all reasonable means to prevent further abuse, including advising each person of the availability of a shelter or other services in the community, and giving each person immediate notice of the legal rights and remedies available. The notice shall include handing each person a copy of the following statement: "IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the city or county prosecuting attorney to file a criminal complaint. You also have the right to file a petition in superior, district, or municipal court requesting an order for protection from domestic abuse which could include any of the following...Information about shelters and alternatives to domestic violence is available from a statewide twenty-four-hour toll-free hotline at (include appropriate phone number). The battered women's shelter⁷⁸ and other resources in your area are. . . . (include local information)"; and...the peace officer may offer, arrange, or facilitate transportation for the victim to a hospital for treatment of injuries or to a place of safety or shelter."

⁷⁶ *Id.* at p. 32.

⁷⁷ While 911 has resources like the Crisis Clinic or 211 after normal business hours there is no consistent connection, protocol, or agreement between 911 and after-hours resources or non-public safety agencies for domestic violence.

⁷⁸ This terminology is outdated. “Domestic violence shelter” is the currently-used term, and RCW 10.99.030 should be amended accordingly.

Some jurisdictions use a form of the Lethality Assessment Protocol (LAP)⁷⁹ at the scene. This screening tool, consisting of 11 items, is designed to measure the risk of homicide/severe re-assault and to connect those victims screened as high risk to victim services. However, after police leave, victims are on their own. They must wait until typical business hours to find which resources are right for them, all while navigating differing intake requirements at service organizations. The ability to connect with a civil legal aid attorney is even more difficult. Many are not able to access the range of resources they need to find safety and stability.

To address this deficient response, we can look to jurisdictions that have adopted a Domestic Violence Enhanced Response Team (DVERT) approach. Seattle Police Department's Victim Support Team is an example of a program that bridges the gap in services for DV victims between the time of law enforcement response and connection with advocacy and detectives/prosecutors.⁸⁰ When law enforcement is called out for a DV call, a volunteer advocate trained by the Victim Support Team is also made available to provide the survivor resources and temporary follow-up until the survivor is able to connect with a community-based advocate. These volunteers are available for overnight and weekend calls, when many community-based programs are closed. Another example is in Clackamas County, Oregon, where the DVERT consists of law enforcement and a victim advocate, and it partners with community-based DV

⁷⁹ Please refer to Appendix C. Spokane County is a jurisdiction that uses the LAP with city law enforcement and across the county. Results of victim responses are then included in the police report and given to the judge for review.

⁸⁰ <http://www.seattle.gov/police/community-policing/victim-support-team-volunteer>.

advocates, the district attorney, and victim assistance.⁸¹ This DVERT approach has also been adopted in other jurisdictions including Colorado Springs⁸² and Cincinnati,⁸³ and could be piloted in Washington jurisdictions other than Seattle.

An additional suggested approach to improve the response that could be piloted is the creation of a virtual “second responder” program, whereby law enforcement at the scene connects victims (and offenders) to additional support via hotlines or tablets. This additional support could include safety planning with victim advocacy, shelter services, or remote filing for a protection order.

Additional efforts should also be made to support and improve connection with civil legal aid attorneys, who can be a lifeline for victims. They can help victims obtain protection orders, keep them from losing their children, preserve their tenancy, keep their job, and help them access public benefits. Over time, they can also help victims take larger steps to free themselves from the cycle of violence, such as ending their marriage, securing custody of their children, establishing child support, cleaning up credit destroyed by an abuser, and preserving or correcting victims' immigration status.

During a criminal case against their abuser, civil legal aid attorneys can represent the victim to preserve his or her privacy, dignity and safety. While the alleged perpetrators of domestic violence are appointed a free attorney to protect their civil rights and a prosecutor represents the interests of the people, there is no attorney

⁸¹ <https://www.clackamas.us/sheriff/dvert.html>.

⁸² http://www.ncdsv.org/images/NCVC_StalkingAMultiDiscipApproach-DVERT_2003.pdf.

⁸³ <https://www.wcpo.com/news/local-news/hamilton-county/cincinnati/new-program-changing-how-cincinnati-police-respond-to-calls-of-domestic-violence>.

designated to specifically advocate for the victim in a criminal case, to protect the victims' rights afforded by law. Washington State has enacted laws providing significant protections to victims of domestic violence;⁸⁴ however, those protections are only meaningful to victims when legal assistance is available to enforce them.

Unfortunately, funding for legal services remains inadequate. In 2014, 76% of low-income Washingtonians who needed civil legal assistance were unable to get the help they needed.⁸⁵ While the Legislature has made significant investments in civil legal aid since the Civil Legal Needs Study was updated in 2014, they have been unable to provide enough funding to increase the ratio of civil legal aid attorneys to Washingtonians eligible for their services to the recommended 1:500. This results in great difficulty connecting with a civil legal aid attorney.

This difficulty falls more on Washingtonians of color, who are statistically more likely to qualify for free civil legal services.⁸⁶ Washingtonians of color are also more likely to experience discrimination or unfair treatment based on their race or ethnicity, with low-income victims of domestic violence who are African-American, Native American, or Hispanic being twice as likely to experience discrimination as the low-income population generally.⁸⁷ At the same time, their experiences with the civil justice

⁸⁴ See *Danny v. Laidlaw Transit Services*, 165 n.2d 200, 209-213, 193 P.3d 128 (2008).

⁸⁵ Washington State Supreme Court, Civil Legal Needs Study (2015), p. 13, available at http://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf.

⁸⁶ *Id.* at p. 20. The percentage of Black Washingtonians in poverty is 26.7%, Native Americans is 25.7%, Hispanic is 26.6%, and “other races” is 28.5%; while the percentage of White Washingtonians in poverty is only 12.5%. The percentage of Asian Washingtonian in poverty is 12.8%.

⁸⁷ *Id.* at pp. 12-13.

system lead them to believe it is less accessible to them. More than a quarter (28.5%) of low-income African-Americans and nearly one-third (31.5%) of low-income Hispanic households in Washington “believe the legal system solves their problems ‘rarely’ or ‘not at all.’”⁸⁸ This limited access to legal services places victims of color at greater risk, by depriving them of tools accessible to others to maintain their safety.

Another idea intended to increase victim access to safety that was discussed by the work group was the ability of law enforcement to grant temporary no contact orders (NCOs) and/or extreme risk protection orders (ERPOs) in the field. A concern from the victim perspective was that if mandatory arrest is amended or ceases to exist in the future, there is the potential for over-use of this option as an attempt to protect law enforcement from liability, and without consideration of victim input. The preferred response from the victim perspective is investing in connection of victims immediately to an advocate, as discussed above, who can assist with safety planning including filing for a civil protection order not tied to the criminal case.

Finally, the work group discussed the need to connect children who witness domestic violence to appropriate services. Although the Washington State Supreme Court has recognized that exposure to domestic violence makes children victims of domestic violence in the domestic violence protection order context,⁸⁹ and despite research showing that the children of offenders and victims suffer from lifelong adverse childhood experiences and too often become offenders or victims themselves,⁹⁰ there

⁸⁸ *Id.* at p. 17.

⁸⁹ *Rodriguez v. Zavala*, 188 Wn.2d 586, 398 P.3d 1071 (2017).

⁹⁰ E.g. <https://www.cdc.gov/vitalsigns/aces/pdf/vs-1105-aces-H.pdf>.

are few resources available. There is a model called “Handle with Care” that is currently being implemented in the City of Spokane. When children witness any traumatic event, this tool triggers a notification to school staff to help schools connect children with trauma-informed responses and resources.⁹¹

Issues that need to be considered in tandem with expanded access to resources for children who witness DV are how to avoid weaponizing these children against the victim for their “failure to protect” and the recognition that sometimes victims are arrested (victim-defendants) for trying to defend themselves, and this could result in a criminal case against the victim were the children deemed victims of their abuse. Expanded access to and requirements for training, as will be discussed later in this report on pp. 38-39, could include training related to the *Social Worker’s Practice Guide to Domestic Violence*, as is done by the Department of Children Youth and Family Services (DCYFS),⁹² which could help mitigate this risk.

⁹¹ Please refer to Appendix F for more information related to Spokane’s Handle with Care Initiative

⁹² *The Social Worker’s Practice Guide to Domestic Violence* describes best practices when serving families impacted by domestic violence in the child welfare system. These practices include universal screening, assessment of the impact of DV on the family (Specialized DV Assessment), case and safety planning with families, and accessing information related to court orders. It also describes how staff might engage with different members of the family and community to gather information, show support and compassion, and encourage each person to get whatever help or support best fits their situation. As new staff receive their initial “core” training, they spend a full day learning about DV and DV-related practices. The Guide is referenced and used during this training. Additionally, the Guide is utilized during in-service training; activities during the training are drawn from the foundational approaches laid out in the Guide.

Washington DV offenders have higher rates of criminal recidivism than any other type of offender.⁹⁴ DV offenders are far more violent than the general offender population, and DV convictions are among the greatest predictors of future criminal acts and the greatest predictor of future violent crime.⁹⁵ Despite these high rates of recidivism, there is a lack of support for prevention, such as domestic violence intervention treatment.⁹⁶ Washington just completed years of systematic and evidence-based reform of DV treatment with new standards, codes, task forces, and training. DV treatment, however, is unaffordable for many offenders because it is not covered by insurance or consistently supported via government funding.⁹⁷ There are also limited services for DV offenders – hotlines and resources are for victims only.⁹⁸

Those who support amendment of mandatory arrest laws in favor of other interventions raised two ideas to expand access to prevention-focused services for

⁹³ Please note that prevention in this context is considered secondary or tertiary prevention because it is an intervention *after* the violence has occurred. Further discussion of these concepts is included in the following publication: Centers for Disease Control and Prevention. "Sexual violence prevention: beginning the dialogue." (2004), available at

<https://www.cdc.gov/violenceprevention/pdf/SVPrevention-a.pdf>.

⁹⁴ Drake, E., Harmon, L., & Miller, M. "Recidivism Trends of Domestic Violence Offenders in Washington State." Washington State Institute for Public Policy (2013).

⁹⁵ Barnoski, R, and Drake, E. "Washington's Offender Accountability Act: Department of Corrections' Static Risk Assessment." Washington State Institute for Public Policy (2007); Hamilton, Z., Kirgeral, A., Campagna, M., Barnoski, R. The Development and Validation of the STRONG-R Recidivism Risk Assessment, Criminal Justice and Behavior, 1-34, 201X, Vol. XX, No. X, Month 2015, 1-34, DOI: 10.1177/0093854815615633.

⁹⁶ Please refer to the E2SHB 1517 DV Perpetrator Treatment Work Group's report for further discussion of this issue, as well as options for funding domestic violence intervention treatment.

⁹⁷ *Id.*

⁹⁸ In 2006-2007, the University of Washington School of Social Work conducted a project called the Men's Domestic Abuse Check-Up. See http://depts.washington.edu/mcheckup/MDACU_Outcomes%20brief.pdf for a summary of their findings.

perpetrators: law enforcement assisted diversion in domestic violence cases (DV LEAD) and the secure crisis assistance center (SCAC). With regard to implementation of DV LEAD programs, Washington jurisdictions (King County/Seattle) have implemented LEAD programs in other contexts⁹⁹ and using that as a model, jurisdictions could adopt pre-charge diversion as an alternative to mandatory arrest. Another DV-specific LEAD model is used by the Winnipeg Police Services. Its inclusion of diversion of DV to a restorative justice center, with cognitive behavioral DV treatment and culturally specific programming, has received significant international attention.¹⁰⁰

Another proposal raised to provide assistance to families where a domestic violence incident has occurred is to require a mandatory intervention via a Secure Crisis Assistance Center (SCAC). As envisioned, the SCAC would be a community hub for domestic violence and other interventions, and a potential defendant would be detained there for 24 hours, instead of arrested. Contemplated services offered at the SCAC could include a risk-needs assessment, financial help, and detox and initial drug treatment assessment referral. Charging would not be an aspect of the SCAC, but after 24 hours there would be a review as to whether the potential defendant should continue to be detained or should be released. LEAD-type diversion programs as discussed above could work out of this center, and law enforcement could issue NCO's and

⁹⁹ E.g. <https://www.kingcounty.gov/depts/community-human-services/mental-health-substance-abuse/diversion-reentry-services/lead.aspx>.

¹⁰⁰ See Canadian DV LEAD model, Winnipeg Police Services, <https://www.cbc.ca/news/canada/manitoba/winnipeg-police-restorative-justice-partner-violence-1.5478990> and <https://www.winnipegfreepress.com/local/restorative-justice-centre-turns-attention-to-domestic-violence-cases-510239752.html>.

ERPO's, also as discussed above, for those released from the center. Services for victims/survivors could also be offered on a voluntary basis out of the SCAC.

Other considerations with regard to the SCAC approach that need to be made include the categories of offenses eligible for SCAC (e.g. First-time offenders or all offenders? Misdemeanants or felons?); whether an individual who failed to follow through could be charged; and the location of services for victims and offenders — services for victims and offenders should not be co-located due to safety concerns.

Before these or other specific models to be used as an alternative to mandatory arrest are implemented or piloted, they should be developed in collaboration with community-based victim advocacy programs and survivors. Input and dialogue from a broader range of community stakeholders, including survivors of color, immigrants, LGBTQ, those from rural communities, and those living in poverty, is a critical step.

Training and Education for Law Enforcement, First Responders, Judicial Officers, Lawyers, and Other Stakeholders

Law enforcement officers receive domestic violence training that emphasizes “enforcement of criminal laws in domestic situations, availability of community resources, and protection of the victim”¹⁰¹ but with little emphasis on prevention. After 14 hours of domestic violence training at basic training, ongoing DV training is not required.¹⁰² The reality is police are alone on 911 calls, with little DV response training, and no discretion. This leaves all involved disadvantaged and frustrated with the

¹⁰¹ RCW 10.99.030(1), available at <https://apps.leg.wa.gov/RCW/default.aspx?cite=10.99.030>.

¹⁰² Please refer to Appendix G for nationwide Gender-Based violence training for law enforcement, by state.

response.¹⁰³ Ongoing DV training, including trauma-informed training, should be mandated for all law enforcement officers, including detectives and patrol.¹⁰⁴

Similarly, after Judicial College, there are no DV-related training requirements for judges, and there are no DV training requirements for lawyers, including prosecutors, defense attorneys, and private practice attorneys who handle DV, family, dependency or criminal cases. This is unacceptable in a field where research and best practices are evolving, and where there are many new laws and regulations¹⁰⁵ of which those involved in the response to DV must be aware. Judges and lawyers could attend a number of DV-focused trainings, which are evidence-based and taught by experts in the field. Some examples of available trainings are those offered at judicial conferences, the Washington Association of Prosecuting Attorney's (WAPA's) conferences, the annual Children's Justice Conference, and the annual DV Symposium. The Washington State Bar Association and the Supreme Court should mandate training related to DV for all judicial officers, including pro tem judges and commissioners,¹⁰⁶ and lawyers.

¹⁰³ See police frustrations with DV response in "Layers of Meaning: Domestic Violence and Law Enforcement Attitudes in Arizona," Morrison Institute Arizona State University (2005), available at <https://repository.asu.edu/items/8558#embed>.

¹⁰⁴ Please note that pursuant to RCW 43.101.272 there is required ongoing trauma-informed training for police detectives.

¹⁰⁵ Please refer to the E2SHB 1517 DV Perpetrator Treatment Work Group's report for a proposal for judicial education related to the new Washington Administrative Code governing Domestic Violence Intervention Treatment and the Domestic Violence definition refinement.

¹⁰⁶ For court commissioners, the education component should also include recommendation for an institutionalized feedback loop when the commissioner's decision is revised by judges in family law and protection order cases. Many larger counties rely on commissioners to hear protection order and temporary order family law issues, so commissioners should be notified and appropriately trained when a decision is revised to avoid repetition of error.

Firearms Forfeiture

The following statistics highlight the distressing connection between firearms and domestic violence:

- Over half of women killed with guns in the United States are killed by an intimate partner or family member.¹⁰⁷
- When an abusive partner has access to a firearm, the risk that the other partner will die increase more than five times.¹⁰⁸
- In the State of Washington in 2016, firearms were used in 499 incidents of domestic violence.¹⁰⁹
- In Washington State, perpetrators used firearms in the majority (56%) of domestic violence homicides, more than all other weapons combined.¹¹⁰

RCW 9.41.800 requires that when the court issues a permanent Domestic Violence Protection Order (DVPO), the court must order the restrained person to surrender all firearms and other dangerous weapons. The requirements for compliance with an order to surrender issued under 9.41.800(3) are as follows:

“A party ordered to surrender firearms, dangerous weapons, and his or her concealed pistol license under RCW 9.41.800 must file with the clerk of the court a proof of surrender and receipt form or a declaration of nonsurrender form within five judicial days of the entry of the order.”

Continued emphasis on enforcement of firearm removal and surrender, and addressing barriers to implementation, must be an ongoing focus in the system response to

¹⁰⁷ U.S. Department of Justice, Federal Bureau of Investigation, “Supplementary Homicide Report,” 2011.

¹⁰⁸ Campbell JC, Webster D, Koziol-McLain J, et al. “Risk factors for femicide in abusive relationships: Results from a multisite case control study.” *American Journal of Public Health*, 93(7), 1089-1097 (2003).

¹⁰⁹ 2016 Crime in Washington: Annual Report (2016), available at

<http://www.waspc.org/assets/CJIS/2016%20crime%20in%20washington.small.pdf>.

¹¹⁰ See p. 8 of “Domestic Violence Fatalities in Washington State” (WSCADV, 2016), available at <https://wscadv.org/wp-content/uploads/2016/12/2016-DV-FATALITIES-IN-WA-STATE-updated-links.pdf>.

domestic violence. The Washington State Coalition Against Domestic Violence (WSCADV) has also recommended numerous strategies for advocates, courts and law enforcement to ensure safe removal of firearms from perpetrators subject to protective orders.¹¹¹

The legal remedies for limiting access to weapons by domestic violence perpetrator are hindered by the fact that many perpetrators illegally keep weapons. For example, a two-year study of domestic violence homicides in Washington State found that over half (54%) of perpetrators responsible for domestic violence-related fatal shootings were prohibited by law from owning firearms.¹¹² While there are no known studies of barriers to implementation of Washington state's forfeiture laws, one out-of-state study "found that even when a protective order banned possession of a firearm, law enforcement officials failed to take effective steps to enforce those orders by seizing or otherwise removing those firearms from abusive households."¹¹³ The conclusion of the study, surveying 782 female victims of intimate partner violence (IPV) in New York and Los Angeles, was that "[b]ased on the perceptions of the IPV victims in this study, laws designed to disarm domestic violence offenders were either poorly implemented or failed to inform victims when their abuser's firearms were surrendered or

¹¹¹ "Strategies for Effective Protective Orders" (WSCADV, February 2018), available at <https://wscadv.org/resources/strategies-effective-orders/>.

¹¹² See "Issue Brief: Firearms Prohibitions and Domestic Violence Homicide" WSCADV (2015), available at <https://wscadv.org/resources/issue-brief-firearms-prohibitions-domestic-violence-homicide/>.

¹¹³ <https://www.preventdvgunviolence.org/assets/documents/legal-landscape/police-seizure-of-firearms-at-scenes-of-domestic-violence.pdf>, citing Webster, D., Frattaroli, S., Vernick, J., O'Sullivan, C., Roehl, J., & Campbell, J. "Women with protective orders report failure to remove firearms from their abusive partners: Results from an exploratory study." *Journal of Women's Health*, 19(1), 93-98. doi: 10.1089/jwh.2007.0530 (2010).

confiscated.” Every day of non-compliance with the order to surrender firearms¹¹⁴ is a day risking harm or death to the victim and the community.

Recommendations to Improve Law Enforcement/Initial System Response

The work group recommends that before adopting new laws or modifying current laws concerning mandatory arrest, the impacts of mandatory arrest laws should be studied and taken into consideration. The national research findings on mandatory arrest laws are complex and nuanced, and there are potentially lethal consequences for victims. Implementation or piloting of alternatives to mandatory arrest, such as DV LEAD or the SCAC, should be done only after collaboration by the research entity with a wide range of statewide stakeholders from the victim advocacy community and survivors, including those who live or have lived in rural communities. Additionally, any funding for pilot projects should be for 2-3 years; researchers need sufficient time to set up parameters for study and to establish benchmarks, and jurisdictions are not yet consistent about charging and data entry related to the revised DV definition.

The following additional recommendations are made to improve the initial response:

- **Mandate data collection and analysis related to law enforcement response.** One or more of the following options could be pursued:
 - Analysis of NIBRS data;

¹¹⁴ Please note that there are pending 5th Amendment challenges to the firearms surrender laws around the required declaration from the accused.

- Statewide standardization of the lethality assessment protocol (LAP) or some other tool;
- Review and analysis of information from law enforcement jurisdictions that already collect and track information from the LAP or some other tool;
- Create a DV dashboard based on information reported by jurisdictions across the State of Washington;
- Conduct a literature review of mandatory arrest research.

It is advisable that research be conducted in tandem with an advisory committee to provide guidance on the type of data to be collected, how it will be analyzed, and identify opportunities for improvement based on the data and other local experience with the DV response.

- **Continue to focus on improvements to collection of data related to MMIWG.**
- **Amend RCW 10.99.030(7) to expand the response to victims beyond the “pamphlet response.”** Options include funding implementation or pilots of a Domestic Violence Enhanced Response Team (DVERT) response in jurisdictions outside of Seattle or creating a virtual second responder program to promote connection with victim advocacy and other services to address victim needs.
- **Allocate additional resources to support expanded access to victim advocacy and civil legal aid for victims of domestic violence.** This would bolster the non-criminal response to domestic violence.

- **Expand victim services to children who witness domestic violence.** Children who witness DV should be prioritized in system and health responses, and child advocacy centers of Washington should be required to provide services to children who witness DV. This should be approached in a way that does not weaponize these children against the parent who is the victim; additional training may reduce this risk.
- **Support treatment for domestic violence offenders.** DV Intervention Treatment in Washington under Chapter 388-60B of the Washington Administrative Code is rooted in cognitive behavioral therapy, and includes differentiated treatment levels.
- **Amend RCW 10.99.010** to require domestic violence prevention education, in addition to domestic violence education focused on protection, for law enforcement officers.
- **Require recurrent DV training for 911 operators, law enforcement, lawyers, and judges, including trauma-informed responses.**
- **Continue to focus on enforcement of firearms removal and surrender** as a foundational component of law enforcement response and risk reduction to all DV.

Pretrial Release

During pretrial proceedings, judicial officers make decisions related to bail and release conditions, as well as no-contact orders to protect victims and the public.

Shortened timeframes for judicial officers to make decisions and amendment of court rules to incorporate DV-specific risk factors that focus on the current offense, social factors, and victim concerns, may help support judicial decisions that will best promote victim and public safety pending adjudication.

Timeframe

Pursuant to RCW 10.99.045(1), “[a] defendant arrested for an offense involving domestic violence shall be required to appear in person before a magistrate within one judicial day after the arrest.” This means that those arrested over the weekend are in custody until the next judicial day, and there is research that indicates holding someone in pretrial custody for more than three days has many unintended collateral consequences, including impacts on housing, recidivism, family relationships, job retention, and recidivism.¹¹⁵

Amending this provision to shorten the time frame, for example to “shall be required to appear in person before a magistrate within one judicial day after the arrest, or within 24 hours, whichever is shorter” may mitigate against those collateral consequences. While this would require additional funding to courts to allow them to hold court over the weekend, proceedings could be conducted virtually. This could also allow for earlier consideration of conditions of release and earlier entry of no-contact orders.

¹¹⁵ See <https://www.pretrial.org/get-involved/learn-more/why-we-need-pretrial-reform/>.

In nearly every respect the framework and language of CrR 3.2 (Release of Accused) and CrRLJ 3.2 (Release of Accused) are identical.¹¹⁶ Each rule provides guidance to the court when establishing pretrial conditions of release for the accused person, the defendant. Both the Superior Courts and the Courts of Limited Jurisdiction engage in hearings considering conditions of release, and each trial court considers matters involving domestic violence.¹¹⁷ These hearings are early-on in the case, usually at Preliminary Hearing or Arraignment. In the press of work, these hearings are usually brief. The judge will have read the probable cause statement and been provided with the defendant's criminal history. Some courts will provide staff to produce a pretrial release recommendation. A victim or defendant family member may

¹¹⁶ The following provisions of CrR 3.2 and CrRLJ 3.2 differ:

1. CrR 3.2(a) states "shall at the preliminary appearance or reappearance pursuant to rule 3.2.1 or CrRLJ 3.2.1 be ordered released" whereas CrRLJ 3.2(a) states: "...shall at the preliminary appearance or reappearance pursuant to rule 3.2.1 be ordered released..."
2. CrR 3.2(a) states that the court shall consider relevant facts, "including, but not limited to, those in subsections (d) and (g) of the rule" whereas CrRLJ 3.2(a) references facts in subsections (c) and (e).
3. CrRLJ 3.2(b)(4) contains an additional condition not listed in CrR 3.2 ("Require the execution of a bond in a specific amount and the deposit in the registry of the court...")
4. CrRLJ 3.2(7) authorizes adoption of a bail schedule whereas CrR 3.2 does not contain this language in CrR 3.2(6).
5. CrR 3.2(j) authorizes review of conditions, whereas CrRLJ 3.2 does not contain a section re: review of conditions.
6. CrRLJ 3.2(m) is [reserved] whereas there is not a [reserved] section of CrR 3.2.
7. CrR 3.2(n) discusses forfeiture whereas there is not a comparable section in CrRLJ 3.2.
8. CrRLJ contains section (o) re: bail in criminal cases- mandatory appearance whereas there is not a comparable section in CrR 3.2.

¹¹⁷ Pursuant to RCW 26.50.010(3), domestic violence is defined as "(a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, or stalking as defined in RCW 9A.46.110 of one intimate partner by another intimate partner; or (b) physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, sexual assault, or stalking as defined in RCW28 9A.46.110 of one family or household member by another family or household member."

provide input. Each rule provides that a defendant is presumed to be released on his or her personal recognizance pending trial, unless (1) the court finds that this personal recognizance will not reasonably assure the defendant's appearance or (2) there is shown a likely danger that the accused (i) will commit a violent crime or (ii) will seek to intimidate a witness or otherwise unlawfully interfere with the administration of justice.

To determine if a defendant is not likely to reappear, the rules set out relevant factors that the court must consider.¹¹⁸ The rules further provide that, if the court finds a defendant is not likely to reappear, the court must set only the least restrictive conditions on the defendant that ameliorate this concern.¹¹⁹

To protect from a substantial danger that the defendant will commit a violent crime or seek to intimidate witnesses or otherwise unlawfully interfere with the administration of justice, the court is permitted to consider a non-exclusive list of permissible restrictions.¹²⁰

Under the heading *Relevant Factors-- Showing of Substantial Danger*, Subsection (e) of both CrR 3.2 and CrRLJ 3.2 provides that in determining which of these restrictions to impose, the court shall consider a list of non-exclusive factors. The Work Group suggests that the Supreme Court, in its rule-making authority, amend Subsection (e) to include factors specific to release for crimes alleged to be domestic violence (DV).

¹¹⁸ CrR 3.2(c) and CrRLJ 3.2(c).

¹¹⁹ CrR 3.2(b) and CrRLJ 3.2(b).

¹²⁰ CrR 3.2 (d) and CrRLJ 3.2(d).

The remainder of this discussion applies to both CrR 3.2 and CrRLJ 3.2, and references to “Rule 3.2” is intended to encompass both rules.

Assessment of risk in the area of pretrial release is one essential topic of the DV Risk Assessment Work Group and its co-chairs determined that a change to Rule 3.2¹²¹ would, with consideration of the science and validation given to certain evaluative tools, make some progress to provide better resources to judges across the state who do not have easy access to these tools. Judges are already determining risk; the provision of a clear list of validated factors for judges to consider with regard to DV cases will help to standardize pretrial release decisions across the state.

All new judges in our state attend a week-long intensive Judicial College in the January/February after their appointment or election. A substantial subject is judicial response to civil and criminal claims of domestic violence. Judge Patti Connolly Walker of Spokane District Court has been a presenter on multiple occasions on the topic of domestic violence and is currently one of the Judicial College Faculty assigned to present at Judicial College to new judicial officers on the topic of domestic violence.

According to Judge Walker:

“New and newly elevated judges will benefit greatly from a vetted and validated set of considerations for pretrial release. Judges and commissioners come to this work with a variety of experience with domestic violence issues, some in the distant past or outside of their former areas of legal practice. It is clear from my interaction with these and other more experienced judicial officers in my training capacity, that we all would benefit by a clearer evaluative process while we all await the necessary data to evaluate risk of offenders using other risk assessment tools.”

¹²¹ Please refer to Appendix H for the rule change proposal

Judge Jacqueline Shea-Brown of Benton & Franklin Counties Superior Court, who co-chairs the Washington State Supreme Court Gender and Justice Commission's Domestic and Sexual Violence Committee and has served as faculty for domestic violence education for judges also highlighted the criticality of judicial officers having appropriate tools and information in domestic violence cases:

"Judges are educated on the lethality of domestic violence at Judicial College and annual judicial conferences and are aware of articles on the topic. At the 2019 Superior Court Judges Association's Spring Judicial Conference, a session was held on *"Reducing Gun Violence by Upholding Protection Order-Related Firearm Laws"* which highlighted a December 9, 2018, article by the Washington Post entitled *"Domestic Slayings: Brutal and foreseeable."* That article included an "analysis of 4,484 killings of women in 47 major U.S. cities during the past decade [and] found that nearly half of the women who were killed – 46 percent – died at the hands of an intimate partner. In many cases, they were among the most brutal deaths, and the most telegraphed. With that lethality in mind along with the constitutional rights of the accused, the pretrial risk assessment of defendants charged with crimes involving domestic violence merit heightened scrutiny with validated and evidenced-based factors. Every effort should be made to ensure judicial officers have the tools they need to make these critically important decisions in a fair and just manner."

In February 2020, the DV Risk Assessment Work Group formed a subcommittee to develop proposed revisions to Rule 3.2, the explicit factors that judges consider when making decisions about pretrial release and conditions to determine if additional factors would be helpful to judges approaching a defendant charged with domestic violence. The goal was to provide judicial officers with additional validated guidance on factors which should be considered at the Preliminary Appearance or Arraignment when release conditions are established. The rule also provides guidance to prosecutors and defense attorneys as each makes their positions known to the judge.

The subcommittee reviewed four validated DV-specific risk assessment tools to identify factors known to be predictive of serious DV recidivism that could be incorporated into the court rules: the Ontario Domestic Assault Risk Assessment (ODARA),¹²² the Danger Assessment (DA),¹²³ the Brief Spousal Assault Form for the Evaluation of Risk (B-SAFER),¹²⁴ and the Domestic Violence Screening Instrument – Revised (DVSI-R)¹²⁵. Additionally, the group consulted the Center for Court Innovation’s Domestic Violence Benchbooks Guide¹²⁶ (2015) and Domestic Violence Fatality Reviews and recommendations compiled the Washington State Coalition Against Domestic Violence¹²⁷ to further inform our inquiry.

There is considerable overlap among the tools with regard to the items assessed.¹²⁸ After thoughtful consideration and discussion, as well as the recommendation of a senior researcher from WSCCR, the subcommittee decided to base

¹²² Hilton, N. Z., Harris, G. T., Rice, M. E., Lang, C., Cormier, C. A., & Lines, K. J. “A brief actuarial assessment for the prediction of wife assault recidivism: The Ontario Domestic Assault Risk Assessment.” *Psychological Assessment*, 16, 267–275. (2004).

¹²³ Campbell, J.C., Webster, D., Koziol-McLain, J., Block, C., Campbell, D., Curry, M.A., Gary, F., Glass, N., McFarlane, J., Sachs, C., Sharps, P., Ulrich, Y., Wilt, S.A., Manganello, J., Xu, X., Schollenberger, J., Frye, V., & Laughon, K. “Risk factors for femicide in abusive relationships: Results from a multisite case control study.” *American Journal of Public Health*, 93(7), 1089-1097 (2003).

¹²⁴ Kropp, P. R., Hart, S. D., & Belfrage, H. “Brief spousal assault form for the evaluation of risk (B-SAFER): User manual.” Vancouver, BC, Canada: Proactive Resolutions (2005).

¹²⁵ Williams, K. R., & Grant, S. R. “Empirically examining the risk of intimate partner violence: The revised Domestic Violence Screening Instrument (DVSI-R).” *Public Health Reports*, 121, 400-408 (2006).

¹²⁶ Center for Court Innovation, “Domestic violence benchbooks: A Guide to Court Intervention.” New York. (2015), available at: <https://www.courtinnovation.org/publications/domestic-violence-benchbooks-guide-court-intervention>.

¹²⁷ “Domestic Violence Fatality Review Recommendations: Suicide & Mental Health” (2016), available at <https://wscadv.org/wp-content/uploads/2016/12/dvfr-recommendations-suicide-mental-health1.pdf>; “Issue Brief: Firearms Prohibitions & Domestic Violence Homicides” (2015), available at https://wscadv.org/wp-content/uploads/2016/12/firearms_prohibitions_dv_homicide.pdf; “Pregnancy and Domestic Violence Homicide” (2013), available at <https://wscadv.org/wp-content/uploads/2016/12/pregnancy-dvfr-issue-brief-12-2013.pdf>.

¹²⁸ Please refer to Appendix I depicting a chart of validated pretrial DV Risk Assessment tools compiled by Dr. Amanda Gilman of WSCCR.

the proposed changes to Rule 3.2 on factors included in the ODARA,¹²⁹ though many of these factors are also included in other tools.

The ODARA was chosen for three primary reasons:

1. The tool is one of the most extensively studied pre-trial DV risk assessments and has been found to have good interrater reliability and predictive validity for DV-specific and general violent re-offending.¹³⁰
2. The judicial officers in the group agreed on the potential feasibility of assessing the factors included in the ODARA. Some available risk assessments include items that would be very difficult or impossible for judicial officers to assess, given their limited time and access to information.
3. There is considerable concern about how risk assessment tools may exacerbate racial/ethnic and socioeconomic disparities in the criminal justice system by focusing on factors that are highly correlated with race/ethnicity and socioeconomic status, including prior criminal justice system involvement, housing, and unemployment. The ODARA, while not ignoring prior criminality, a factor proven to be highly predictive of future homicide and re-assault, pays substantial attention to factors assessing the nature of the current offense (e.g., confinement and threat to kill during the current assault), social factors (e.g., the presence of shared children and children unrelated to the alleged perpetrator), and victim concerns (e.g., concerns about future assaults and barriers to support). These items appear much less likely to be correlated with demographic characteristics, and thus, less likely to result in disparities.

All 13 factors found in the ODARA, many of which are also found in the other validated risk assessments noted above,¹³¹ are included in this proposal to amend Rule

¹²⁹ Please refer to Appendix J for ODARA scoring form.

¹³⁰ See Graham, L.M., Sahay, K.M., Rizo, C.F., Messing, J.T., & Macy, R.J. "The validity and reliability of available intimate partner homicide and reassault risk assessment tools: A systematic review." *Trauma, Violence, & Abuse* (2019). Advance online publication. Some courts may already be familiar with the ODARA; it is currently used in King County by the Superior Court, as well as by public defense and the county prosecutor's office.

¹³¹ Many of these factors are in conformity with findings made by the Washington Supreme Court in *Rodriguez v. Zavala*, 188 Wn.2d 586, 599, 398 P.3d 1071 (2017), concerning the peril of domestic violence when children are involved. In a civil request for DV protection order under RCW 26.50, where a child was not physically present, but actual threats to the child were made, the Washington Supreme Court held that the mother's "reasonable fear for her child" entitled her to relief. *Id.* at 599. The Supreme Court

3.2. The ODARA factors that are already contained in Rule 3.2, section (e) are referenced by footnote. The subcommittee's proposed amendments to the rules include additional ODARA factors that are not already listed in the rule for courts' consideration, and are listed in the proposed new section (e), subsection (9).

After presentation of the proposal to the full work group on June 23, 2020, the work group decided that this proposal should be brought forward. It is our understanding that the proposal will be introduced to the Gender and Justice Commission, and it is our hope that the Commission or another appropriate court entity will sponsor the rule change to the Supreme Court.

Recommendations to Improve Pretrial Release Process

- **Amend 10.99.045(1) to shorten the timeframe between arrest and pretrial hearing and provide funding to allow court to be held over the weekend.** This would help to reduce the unintended consequences of arrest, including impacts on housing, family relationships, employment, and recidivism.
- **Amend CrR 3.2 and CrRLJ 3.2 to incorporate factors specific to domestic violence to pretrial release determinations.** Adoption of factors based on the ODARA minimize the potential for exacerbation of bias because of their focus on factors related to the current offense, social factors, and victim concerns.

also concluded that exposure of a child to domestic violence constitutes harm and qualifies as domestic violence under chapter 26.50 RCW. Multiple scientific studies and learned treatises are included in the discussion. *Id.* at 596-597.

Post-Conviction Risk Assessment

A mandate to the E2SHB 1517 work group was to “[m]onitor, evaluate, and provide recommendations on the development and use of the risk assessment tool” by Washington State University for use by the Department of Corrections (DOC). This is a tool that is limited in scope to felony cases from superior court.

Utilizing items and responses currently collected via the DOC’s risk-needs assessment tool, the Washington ONE, it was contemplated that an additional risk prediction module would be created, predicting DV misdemeanors and felonies in the community, for offenders being supervised by DOC. Currently offenders are assessed with the Washington ONE upon admission to prison or community custody, and reassessed every six months. The new tool was envisioned to help predict those offenders that are higher risk for committing DV upon reentry to the community, and prioritize those with a higher need for DV programming, both in prison and in the community.

Dr. Zachary Hamilton (formerly of WSU) and Mark Kucza (DOC) participated on the work group as well as managing the risk tool development project. Other E2SHB 1517 work groups were members of the Advisory Committee for the risk tool development,¹³² and the work group was kept apprised of the status of tool development via updates at our meetings through January 2020. For example, at the work group’s November 2019 meeting, Dr. Hamilton and Mr. Kucza delivered a joint

¹³² David Baker, Sheila Lewallen, Judge Mary Logan, Dr. Marna Miller, Dawn Williams.

presentation about the tool development, with an extended opportunity for the work group to ask questions and identify concerns.¹³³

At the June work group meeting, it was communicated to the work group by Dr. Hamilton and Mr. Kucza that there were delays with the risk tool development process that they were working to resolve. Both Dr. Hamilton and Mr. Kucza were present at this meeting, and continued to attend work group meetings in August and September.

Our current understanding is that the risk tool development is on hold for an indeterminate time. After Washington State University obtained data sharing agreements and Washington State Institutional Review Board approvals, a change in current data sharing agreements was required when Dr. Hamilton accepted a new position at the University of Nebraska-Omaha. Then, the Work Group unexpectedly learned on October 1, 2020, a month before this report was due to the Legislature, that the Department of Corrections plans to use a different process, and will no longer be working with Dr. Hamilton with regard to this risk tool development.¹³⁴ Unfortunately, this means that there has been no progress on this risk tool. This also impacts the implementation of the Domestic Violence Sentencing Alternative created within Part V of E2SHB 1517.¹³⁵

¹³³ Some of the concerns identified by the work group included how the tool would address bias, its limited application, and whether it would include firearms information.

¹³⁴ Please refer to Appendix K for the Department of Corrections' "Response Concerning Domestic Violence Risk Assessment" dated October 23, 2020.

¹³⁵ Please refer to the E2SHB 1517 DV Perpetrator Treatment Work Group's report for further discussion of this issue.

In addition to the lack of progress related to this tool development, the work group was disappointed about the limited application of this tool; because it was being created for use by DOC, it could not be used by courts of limited jurisdiction. Once the tool development is resumed and implemented, adaptation of the tool for a pilot study is planned, utilizing supplemental DV, law enforcement collected, data from King County to attempt to identify additionally predictive items that are currently, or potentially can be, routinely collected and serve in specified prediction models for courts of limited jurisdiction.¹³⁶ Additionally, the work group proposes data analyses utilizing the WADOC developed tool. Specifically, the developed tool could be pilot-tested with assessment data collected from offenders/defendants within courts of limited jurisdiction. Findings from these analyses will serve to provide evidence of the WADOC developed tool's extended use and potential modifications needed to retail prediction accuracy.

Recommendations to Improve Post-Conviction Risk Assessment

- **Work to develop the DOC risk tool should be resumed.**
- **Adaptation of the risk tool to non-felony DV cases should be considered** after the DV risk tool is created, implemented by DOC, and evaluated.

¹³⁶ Chapter 357, Laws of 2020, available at <http://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/6168-S.SL.pdf?q=20201005221559>.

SCREENING FOR DOMESTIC VIOLENCE OUTSIDE THE CRIMINAL JUSTICE PROCESS

Family Law Proceedings

Victims of domestic violence experience needs and barriers in many aspects of their lives and may seek civil remedies to address those needs,¹³⁷ particularly with regard to family and child custody matters. This section focuses on screenings for intimate partner violence (IPV) or family violence that may be conducted by family law attorneys and/or incorporated into family law proceedings, to help to address safety considerations that may otherwise be unidentified,¹³⁸ minimize risk and maximize service connections to improve outcomes for both victims and children. Screening tools for use by family law attorneys are often focused on the initial or ongoing assessment of whether IPV exists in a client's case, and allow a lawyer to identify the type, frequency, pattern, and severity of domestic and family violence in order to better meet the client's needs and connect them with a community-based domestic violence advocate and other appropriate services.¹³⁹

¹³⁷ Please refer to additional discussion on this subject on pp. 32-34 of this report in the section entitled "Victim Support."

¹³⁸ The risk of escalated DV, including homicide, is higher at the time of separation or initiation of family law proceedings. See e.g. N. Z. Hilton, G. T. Harris, & M. E. Rice, "Risk Assessment for Domestically Violent Men: Tools for Criminal Justice, Offender Intervention, and Victim Services" American Psychological Association (2010); M. Wilson and M. Daly, "Spousal homicide risk and estrangement," *Violence Vict* 8:3-16 (1993).

¹³⁹ Many DV survivors rely upon Civil Legal Aid attorneys for assistance with their family law needs. In fact, civil legal aid attorneys practicing family focus primarily on serving survivors of DV and their children and thus tend to be more experienced in navigating the intricacies of DV's effect on family law proceedings and identifying potential future risks to be addressed in family law orders. Recognizing the high number of legal issues experienced by DV survivors, it also may be useful for private family law

Many civil family law litigants have experienced or perpetrated domestic violence. For example, a study of the efficacy of screening in the child welfare sector showed a 300% increase in the number of abused women identified during the intake process after the introduction of family violence screening questions.¹⁴⁰ One finding in this study concluded that asking about IPV clearly leads to clients disclosing such violence.¹⁴¹ In 2015, a Canadian work group sought to identify whether a DV risk tool or checklist could be used by family law attorneys to help to identify cases of domestic violence and promote connection to victim services and safety planning. As aptly stated in their report, “The ultimate purpose of screening is to match appropriate services, processes and interventions to the type and level of abuse and violence.”¹⁴²

In an informal local survey of Washington family law attorneys by the Washington State Bar Association’s Family Law Executive Committee, the majority of responses were in favor of the promulgation of a DV screen or checklist for family law cases. Attorneys believed this to be particularly beneficial for those new to the practice of family law. Concerns surrounding the use of such an instrument included the distribution of a valid tool that would be helpful for lawyers, the need for validation by research, and the need for a training component on how to use the tool with clients,

attorneys to refer clients who have survived DV to civil legal aid for assistance with other types of legal issues, including consumer, employment, housing, public benefits, and immigration law.

¹⁴⁰ Randy H. Magen, Kathryn, Conroy, and Alisa Del Tufo. “Domestic Violence in Child Welfare Preventative Services: Results from an Intake Screening Questionnaire.” (1997).

¹⁴¹ *Id.*

¹⁴² Gabrielle Davis, Loretta Frederick, and Nancy Van Steegh, “Practice Guides for Family Court Decision-Making in Domestic Abuse Related Child Custody Matters.” Battered Women’s Justice Project (2015), available at <https://www.bwjp.org/assets/documents/pdfs/practice-guides-for-family-court-decision-making-ind.pdf>.

speak to them about the results, and/or avoid the attempt to use it as evidence or in argument in family law proceedings. Concerns also included the potential liability exposure for lawyers who would not use the tool, or those who did and received an inaccurate result, and potential bias; even if only used to help an attorney make client-based decisions, it could have systemic implications.

In 2017, the American Bar Association (ABA) House of Delegates adopted Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protection Order Cases (hereafter referred to as “The Standards”).¹⁴³ These Standards recommend that practitioners acquire knowledge and expertise about domestic violence dynamics before undertaking representation of victims in civil cases. The goals of the recommendations are to improve the quality of representation provided to victims, enable practitioners to provide effective and ethical representation so that they can holistically represent victims, and to raise awareness around the need for high-caliber representation. The Standards also contain recommendations which include understanding the role, culture, language, immigration status, and age or disabling conditions of a victim can play in effective representation.¹⁴⁴ The ABA screening tool is currently the most authoritative screen for identifying needs and local resources.

There are resources and checklists available that could be adapted for use by

¹⁴³ See https://www.americanbar.org/groups/domestic_violence/Initiatives/standards-of-practice/.

¹⁴⁴ See also Ciske, Sandy; Senturia, Kirsten; Shiu-Thornton, Sharyne; Sullivan, Marianne, “Cultural Issues Affecting Domestic Violence Service Utilization in Ethnic and hard to Reach Populations.” National Institute of Justice (2000).

family law attorneys to determine if a client is or has experienced IPV and where to connect them locally for support. A Washington-specific resource that could be adapted is the King County Coalition Against Domestic Violence's¹⁴⁵ *Domestic Violence, Parenting Evaluations, and Parenting Plans: Practice Guide for Parenting Evaluators in Family Court Proceedings* (2009).¹⁴⁶ Another resource is a checklist entitled *Adapted from Reading and Teaching Teens to Stop Violence*, Nebraska Domestic Violence and Sexual Assault Coalition, Lincoln, NE., which was developed and provided by the National Coalition Against Domestic Violence. While it is not a screen per se, it provides victims with a series of questions they can self-administer to determine if they have signs of being in an abusive relationship. Other screens available include one for IPV provided by the Center for Relationship Abuse Awareness¹⁴⁷ and a universal family violence (FV) screening tool/procedure developed for family law practitioners in Canada.¹⁴⁸

Family law attorneys are frequently the first contact victims may make at the time of separation, a time where danger to the victim is increased, and are in a unique position to enhance or undermine a victim's safety, along with that of their children. When the consequences of inadequate knowledge or training about domestic violence dynamics and risk assessment can be so dire, it is concerning that there are not

¹⁴⁵ Since renamed the Coalition Ending Gender-Based Violence

¹⁴⁶ Available at <https://endgv.org/wp-content/uploads/2016/03/PE-practice-Guide-final-08-13-09-compressed11.pdf>.

¹⁴⁷ These screening questions were adapted from Valente, Roberta L, "The Impact of Domestic Violence on Your Legal Practice: A Lawyer's Handbook (1996); "Screening Tools for Attorneys." American Bar Association Commission on Domestic Violence (2005); and "Representing Victims of Domestic Violence." American Bar Association, Division for Public Education (2001). They are available at: <http://stoprelationshipabuse.org/professionals/legal-professionals/screening-clients/>.

¹⁴⁸ Available at <https://www.justice.gc.ca/eng/rp-pr/jr/can-peut/can-peut.pdf>.

stronger requirements for training attorneys who practice in this area and concurrent development of evidence-based screening tools to assist them in assuring the protection of their clients and children.

When family law lawyers are not knowledgeable about domestic or family violence, this knowledge gap can result in victims' experiences of domestic violence being ignored or even undetected in family law cases. This has negative implications for victims and their children in determining custody, relocation, parenting time, and distribution of assets, whether or not to participate in mediation or other forms of alternative dispute resolution, and the type of parent education that is needed.¹⁴⁹ In Minnesota, the Domestic Abuse Committee of the Family Law Section of the state bar association provides a list of tips for family law lawyers to “apply the lens of domestic violence to existing interviewing processes” and includes a suggested protocol with questions.¹⁵⁰ Currently, a coalition of stakeholders in King County are developing and studying an IPV screening tool under consideration for use by guardians ad litem and parenting evaluators in family law cases for use in screening for DV. While this tool is not yet ready for dissemination, it bears further consideration.

For such domestic violence screening tools to be effective, they should be administered in a private, confidential setting.¹⁵¹ Training prior to family law lawyers

¹⁴⁹ E.g. Laing, Lesley, “Secondary Victimization: Domestic Violence Survivors Navigating the Family Law System. (2017); Araj, Sharon, “Domestic Violence, Contested Custody, and the Courts: A Review of Findings from Five Studies with Accompanying Documentary.” *Sociological Perspectives* (2012).

¹⁵⁰ <https://www.mnbar.org/docs/default-source/sections/dv-screening-tool-final.pdf?sfvrsn=2>.

¹⁵¹ <https://www.kingcounty.gov/~media/courts/superior-court/docs/family/services/domestic-violence-and-child-maltreatment-coordinated-response-guideline.ashx?la=en>.

administering such tools is key to their enhancing safety and risk.¹⁵² Training topics that might be suitable for family law attorneys related to screening for IPV are outlined below:

- The purpose of the screening
- Appropriate language to use when talking about IPV
- How to spot and analyze red flags for abuse
- Developing rapport/trust with new clients
- The importance of screening throughout the course of the case
- Risk assessment and safety planning
- Family violence and power imbalances
- Post-separation abuse and abusive litigation
- Key safety concerns in IPV cases
- Impact of IPV on children
- Impact of trauma on client
- Cultural issues related to IPV and family law/court processes
- Contextual factors to be aware of (e.g., client's body language; cultural, community or family values; language barriers; age; sexual orientation; gender identity; disability status; history of substance use; etc.)

¹⁵² This type of training has been employed in other settings. For example, in 2010, the Washington State Department of Social and Health Services (DSHS) published the *Social Worker's Practice Guide to Domestic Violence* (available at <https://wscadv.org/wp-content/uploads/2019/01/DCYF-DV-Guide.pdf>) to all the Department of Children and Family Services (DCFS) Social Workers, and implemented training in the use of the guide in all CPS investigation cases. The social workers are required to engage in ongoing and consistent screening throughout the processing and assessment of a case and to consider lethality risks to children and the non-offending parent.

- Importance of referring to community resources for survivors, perpetrators, and children
- Appropriate interviewing techniques with clients who have survived IPV
- How to administer a screen for IPV
- How to interpret the findings of a tool

In sum, Washington family law attorneys would benefit from identification of a best practice screening tool for IPV to use to identify domestic violence in their contacts with clients, and to connect them to appropriate resources. Identifying the best screening tool currently available and the training necessary to implement would likely enhance safety for Washington families, victims, and children. The Washington State Bar Association should be involved in implementing this recommendation.

Extra-Legal Risk Assessments

There are settings outside of the criminal and civil legal processes where additional screening could enhance the safety of domestic violence victims. For example, in medical settings such as hospitals, if domestic violence is identified, it provides an opportunity for intervention and connection with services. In Spokane, for example, emergency room nurses are piloting a screen for strangulation; a person strangled by an abusive partner is at increased risk of stroke, brain damage, heart

attack, pulmonary edema, miscarriage and death.¹⁵³ They are also 750 times more likely to be killed by the person who strangled them.¹⁵⁴

This pilot is a citywide effort where patients are asked, “Have you been strangled?” The determines next steps including additional medical interventions and provision of social support resources. Attention should be paid to the results of this pilot, and if successful, replication in other parts of the state should be explored.

Recommendations for Identifying DV in Civil and Extra-Legal Settings

- **Support the use of domestic violence screening tools in family law cases.** This should include development of “best practices” for Washington State family law practitioners based on available research and adaptation of other risk screening tools, as well as additional trainings for family law attorneys related to domestic violence. Not only might this impact the interventions employed in a particular case, but help to facilitate connection with other services for the victim and family.
- **Follow-up on the results of Spokane’s pilot project to screen for strangulation in emergency rooms, and, if successful, explore broader replication statewide.**

¹⁵³ McCarty, Emily. “Spokane nurses want strangulation to stop being overlooked in domestic violence cases.” *Seattle Crosscut* (February 24, 2020), available at <http://www.courts.wa.gov/content/publicupload/eclips/2020%2002%2024%20Spokane%20nurses%20want%20strangulation%20to%20stop%20being%20overlooked%20in%20domestic%20violence%20cases.pdf>.

¹⁵⁴ *Id.*

CONCLUSION

In this report, the Domestic Violence Risk Assessment Work Group provides actionable recommendations to provide a more comprehensive response to domestic violence in Washington State. For the initial criminal justice response, these recommendations include providing additional systemic supports for victims and for offenders, additional research, expanded education opportunities and requirements, and continued focus on firearms surrender. At the pretrial phase, this includes shortening the length of time where defendants are held in-custody before their first court appearance as well as development of DV-specific factors courts can look to when determining pretrial release conditions. Post-conviction, the recommendations are to complete development of the risk tool for DOC and explore expansion for use by courts of limited jurisdiction. Outside of the criminal justice process, the use of screening tools for domestic violence could be supported to provide better legal representation and medical care, and also to connect survivors with services that they need in the community.

We appreciate the opportunity to consider the issues related to risk assessment and to formulate recommendations for improvement over the course of two years (E2SHB 1163 from 2017-2018 and E2SHB 1517 from 2019-2020). After much reflection in formulating these recommendations, we urge the Legislature to prioritize implementation of the recommendations from the E2SHB 1163 and E2SHB 1517 work

groups. Moreover, further research and analysis is needed as detailed in this report, and should be conducted by a research entity.

Washington State Supreme Court Gender and Justice Commission

COMMISSION MEMBERS

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Washington State Supreme Court

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Benton Franklin Superior Courts

Honorable Cindy K. Smith
Suquamish Tribal Court

Ms. Sonia M. Rodriguez True
True Law Group. P.S.

Ms. Victoria L. Vreeland
Vreeland Law PLLC

May 6, 2020

Representative Roger Goodman
Chair, Public Safety Committee
State Representative, 45th District
Leg 436B
P.O. Box 40600
Olympia, WA 98504

Sent electronically

Re: E2SHB 1517 DV Work Groups- Delayed submission of reports due to COVID-19

Dear Representative Goodman,

Due to delays to work group activities as a result of the COVID-19 pandemic, we will not be able to submit our reports by June 30, 2020. In accordance with Governor Inslee's Executive "Stay Home, Stay Healthy" Order, the Washington State Supreme Court's closure to the public, and the fact that all but a few Administrative Office of the Courts employees and many court employees and other work group members are required to telecommute, we were not able to meet in person as planned on April 7th. We also determined that it was necessary to suspend all large work group activities from March 20th through May 5th, to allow work group participants to focus on court, employee, and personal health and safety priorities, and to address the impact that COVID-19 is having in their families, courts, and communities.

We plan to resume work group activities this month, with anticipated virtual meetings via ZOOM in June and September, and **we will endeavor to deliver our report by October 30, 2020.**

Additionally, as we have preliminarily discussed, we would welcome the opportunity to give a presentation on the work group report during the Committee Assembly meetings at the end of the year. We, along with Gender and Justice Commission Vice Chair, Judge Marilyn Paja, have tentatively marked our calendars for meetings on November 30th and/or December 1st. Once available, please advise us of your committee's schedule in this regard.

It is our understanding that there may be a special legislative session this summer. If that comes to fruition, and you have the opportunity to include a statutory adjustment to our report deadline to October 30, 2020, we would appreciate it.

May 6, 2020
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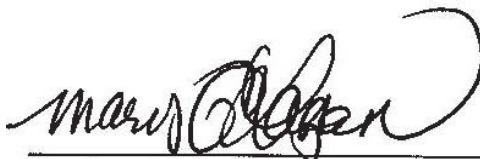
Finally, although our task is separate from the risk tool development by Dr. Hamilton for use by the Department of Corrections, in our role of monitoring that process, we understand that this work by DOC may also be delayed. DOC may also communicate with you.

We will continue to keep you apprised of work group activities and meetings, and please do not hesitate to contact us if you have any questions. This is important work, and we want to ensure that we are giving the issues raised in E2SHB 1517 the consideration that they deserve.

Best regards,



Judge Eric Lucas
E2SHB 1517 Co-Chair
Snohomish County Superior Court



Judge Mary Logan
E2SHB 1517 Co-Chair
Spokane County Municipal Court

Cc:

Justice Sheryl Gordon McCloud, Chair, Washington State Supreme Court Gender and Justice Commission

Judge Marilyn Paja, Vice Chair, Washington State Supreme Court Gender and Justice Commission

Dr. Zachary Hamilton, Washington State University

Mr. Mark Kucza, Department of Corrections

Ms. Dory Nicpon, Administrative Office of the Courts

Appendix B

Validated Instruments to be used by Law Enforcement and Court Personnel Pre-Trial

Lethality Screen

- Adapted from the Danger Assessment (DA)
- Measures risk of homicide/severe reassault
- 11 items based on interview with the victim
- Designed to be used at first police contact to screen victims for further assessment
- High specificity (correctly identifies those at risk) but low sensitivity (high risk of false positives)

Ontario Domestic Assault Risk Assessment (ODARA)

- Measures risk of rearrest/reassault
- 13 items based on police records and interview with the victim
- Designed to be used by law enforcement after arrest and before bail hearing
- Moderate to strong predictive validity, depending on study
- Also adapted for probation/corrections (DVRAG)

Brief Spousal Assault form for the Evaluation of Risk (B-SAFER)

- Derived from the Spousal Assault Risk Assessment (SARA) Guide
- Measures risk of rearrest/reassault
- 10 items based on police case file and victim/perpetrator/witness interviews
- Designed to be used by law enforcement after initial contact
- Moderate predictive validity

Domestic Violence Screening Instrument – Revised (DVSI-R)

- Measures risk of rearrest/reassault for violence in any intimate relationship (not just IPV)
- 11 items based on police case file, victim interview, and clinical assessment of perpetrator
- Designed to be used by court personnel after arrest before arraignment
- Moderate to strong predictive validity, depending on study

Validated Instruments to be used by Victim Services (Social Workers, Advocates, Health Care Workers, etc.)

Danger Assessment (DA)

- Measures risk of homicide/severe reassault
- 20 items based on victim interview (also uses calendar to help with recall)
- Moderate to strong predictive validity, depending on study
- Has been adapted for:
 - Females in same-sex relationships (DA-R)
 - Immigrant women (DA-I)
 - Use in hospitals (DA-5)
 - Use by law enforcement (Lethality Screen)

Validated Instruments to be used by Probation and Corrections

Domestic Violence Risk Appraisal Guide (DVRAG)

- Adapted from the Ontario Domestic Assault Risk Assessment (ODARA) to be more in-depth
- Measures risk of rearrest/reassault
- 14 items based on police case file, victim interview, and clinical assessment of perpetrator
- Moderate predictive validity

Spousal Assault Risk Assessment Guide (SARA)

- Measures risk of rearrest/reassault
- 20 items based on police case file, perpetrator interview, victim interview, and criminal history
- Small to moderate predictive validity, depending on study

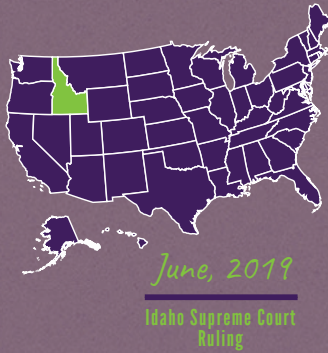
Appendix C

DOMESTIC VIOLENCE LETHALITY SCREEN FOR FIRST RESPONDERS

Officer:		Date:	Case#:
Victim:		Offender:	
Age:	Race:	Phone:	Gender:
☐ Check here if victim did not answer any of the questions.			
► A "Yes" response to any of Questions #1-3 automatically triggers the protocol referral.			
1. Has he/she ever used a weapon against you or threatened you with a weapon?	☐ Yes	☐ No	☐ Not Ans.
2. Has he/she threatened to kill you or your children?	☐ Yes	☐ No	☐ Not Ans.
3. Do you think he/she might try to kill you?	☐ Yes	☐ No	☐ Not Ans.
Negative responses to questions #1-3, but positive responses to at least four of Questions #4-11, trigger the protocol referral.			
4. Does he/she have a gun or can he/she get one easily?	☐ Yes	☐ No	☐ Not Ans.
5. Has he/she ever tried to choke you?	☐ Yes	☐ No	☐ Not Ans.
6. Is he/she violently or constantly jealous or does he/she control most of your daily activities?	☐ Yes	☐ No	☐ Not Ans.
7. Have you left him/her or separated after living together or being married?	☐ Yes	☐ No	☐ Not Ans.
8. Is he/she unemployed?	☐ Yes	☐ No	☐ Not Ans.
9. Has he/she ever tried to kill himself/herself?	☐ Yes	☐ No	☐ Not Ans.
10. Do you have a child the he/she knows is not his/hers?	☐ Yes	☐ No	☐ Not Ans.
11. Does he/she follow or spy on you or leave threatening messages?	☐ Yes	☐ No	☐ Not Ans.
An officer may trigger the protocol referral, if not already triggered above, as a result of the victim's response to the below questions, or whenever the officer believes the victim is in a potentially lethal situation.			
Is there anything else that worries you about your safety?			
(If "yes") What worries you?			
Check one:	☐	Victim screened in according to protocol	
	☐	Victim screened in based on the belief of the officer	
	☐	Victim did not screen in	

Note: The questions above and the criteria for determining the level of risk a person faces is based on the best available research on factors associated with lethal violence by a current or former intimate partner. However, each situation may present unique factors that influence risk for lethal violence that are not captured by this screen. Although most victims who screen "positive" or "high danger" would not be expected to be killed, these victims face much higher risk than that of victims of intimate partner violence.

Emerging Issues in Victimization: The Impact of the *Clarke Decision* on Policing's Response to Victimization



What is the Clarke Decision?

The Clarke decision made it unlawful for police to make an arrest in misdemeanor crimes that happen outside their presence without a signed warrant from a judge. Unfortunately this also applies to domestic violence incidents.

Impacts

1

The response a citizen receives is dependent upon where they live in Idaho. There is no consistent response provided by policing agencies.



2

Officers have begun recommending that victims seek civil protection orders. Violations to these orders however are still misdemeanors that officers can't intervene in because of the *Clarke* decision.

3

As a result of the inability for officers to remove suspects from the scene of a domestic violence incident, victims are encouraged to leave despite many issues with this solution.



4

Victim service agencies report difficulties in accessing victims to offer services due to safety concerns that offenders are still present and may become aware that the victim is seeking services.

5

Victim service agencies report that policing agencies' response post-*Clarke* possibly harms the police-victim relationship resulting in victims' reluctance to call the police during subsequent victimizations.



6

Officers have begun using citations as opposed to obtaining an arrest warrant to immediately remove the suspect. As a result, court appearances are delayed 14-21 days after the original domestic violence incident occurs.

**Washington State Judicial Branch
2021 – 2023 Biennial Budget
Decision Package**

Agency: Administrative Office of the Courts

Decision Package Title: Office of Innovation – Realizing Change Through Research

Budget Period: 2022-2025

Budget Level: [Click here to enter text.](#)

Agency Recommendation Summary Text: The Administrative Office of the Courts is requesting funding to support an FTE that will work within the Office of Court Innovation. This research position will focus on research related to race, gender, foreign and signed language groups, and how the courts interact and administer justice to such historically marginalized groups.

Summary:

Operating Expenditures	FY 2022	FY 2023	FY 2024	FY 2025
Fund	\$164,450	\$164,450	\$164,450	\$164,450
Total Cost	\$164,450	\$164,450	\$164,450	\$164,450
Staffing	FY 2022	FY 2023	FY 2024	FY 2025
FTEs	1.0	1.0	1.0	1.0
Object of Expenditure	FY 2022	FY 2023	FY 2024	FY 2025
Senior Research Associate	164,450	164,450	164,450	164,450

**Package Description:
Unmet Research Needs**

As the sole research department within the AOC, the Washington State Center for Court Research (WSCCR) provides necessary research functions for the various policy groups within the judicial branch, which includes the BJA, DMCJA, SCJA, JCA, Supreme Court Commissions, and others. Due to resource limitations, WSCCR has been unable to meet some of the needs of these policy groups.

Specifically, WSCCR and the Supreme Court Commissions are positioned together under the AOC's Administrative Division as "The Office of Court Innovation," yet there are no dedicated staff or resources that allow them to fully realize their partnership. Over the past couple of years, with assistance from temporary grant and legislative funding, WSCCR and the Commissions have been able to collaborate on projects like

the DV Legislative Workgroups and Gender Justice/Bias Study supported by the Gender and Justice Commission, the Jury Diversity Demographic Survey by the Minority and Justice Commission, the Pretrial Reform Task Force which was a collaboration between the SCJA, DMCJA, and the Minority and Justice Commission. The Commissions and other Associations appreciate being able to call on the expertise of WSCCR because they are uniquely positioned and qualified to work with Washington State Courts and all of its partners.

The Supreme Court Commissions have identified several unmet research needs related to the policy work they do:

- Minority and Justice Commission – Reports focusing on racial disproportionality in the courts. The last report focusing on race in Washington’s criminal justice system was 8 years ago. Other important policy topics that need continued reporting include LFOs, pretrial, and jury diversity.
- Gender and Justice Commission – Reports focusing on domestic violence and other forms of gender-based violence and gender bias. GJCOM is currently updating a study that identifies areas within the courts that gender bias exists. The last study was done over 30 years ago. There will be areas that need further research or continued research, such as the increase in incarceration rates for women, and many others.
- Interpreter Commission – Interpreter service usage, foreign and signed language community size and language needs, and resource needs analysis, especially with respect to translated court forms, proceedings information, and court services on all court websites.

This collaborative proposal between the Supreme Court Commissions and the Washington State Center for Court Research will help the Washington State Courts begin to understand how they deliver justice to people, with an emphasis on understanding race, gender, and language access. Understanding where we are is necessary to taking the next steps towards where we want to go.

Current Level of Effort: If the proposal is an expansion or alteration of a current program or service, provide information on the current level of resources devoted to the program or service. Please include current expenditure authority level and FTEs.

There are no current AOC resources that are devoted to this program or service. Work conducted by WSCCR on existing projects is supported by temporary grant or legislative funding that will end before this potential new allocation would take effect.

Decision Package expenditure, FTE and revenue assumptions, calculations and details: Clearly articulate the workload or assumptions used in calculating expenditure and revenue changes proposed.

The 1.0 FTE senior research associate will be responsive for the ongoing research needs of the Supreme Court Commissions to look at issues of race, gender, and language access in the courts. Some of these specific areas include:

- Racial disproportionality in the courts;
- Gender-based violence (domestic violence and sexual assault) and other forms of gender bias in the courts;
- Need for and usage of language access services and resources including interpreters and textual document translators;
- Issue-Specific Research: Pretrial, legal financial obligations, domestic violence treatment, jury diversity, interpreter-related continuances, etc.

Current WSCCR staffing capacity cannot take on additional work related to the issues identified above.

Decision Package Justification and Impacts

How does this package contribute to the Judicial Branch Principal Policy Objectives identified below?

Fair and Effective Administration of Justice in All Civil and Criminal Cases.

The justice system is not fair and equal for all. We know that people of color are disproportionately represented in our criminal justice system. We know that women are disproportionately victims of gender based violence. We know that people who do not communicate in English do not truly have equal access to the courts. While we strive to create a justice system that is fair and equal to all, we know we still have a long way to go.

The Supreme Court Commissions are uniquely positioned to respond to these issues. Their work focuses on finding ways that we can address these issues within the courts in Washington State. Our activities involve education, stakeholder collaboration, engaging in policy, and research. Research that specifically addresses race, gender, and language access in the courts helps the judicial branch and its partners identify where inequities exist, so that we can begin to identify and implement solutions.

Accessibility

Research that helps us identify language access needs in the courts will help us figure out solutions to identified language access barriers.

When we address issues of disparity and unequal treatment based on race, gender, and other marginalized identities, we can begin to create courts that more people have trust and confidence in, and are thus more accessible.

Access to Necessary Representation

Many issues related to disproportionality have direct linkages to certain groups in our society not having adequate access to representation. Study in areas related to race, gender, and language access will help us reveal areas where these groups do not have access to necessary and effective representation.

Commitment to Effective Court Management

In order for our courts to be effective, they have to understand how they are serving all customers with a keen eye on fairness and justice. Are courts effectively providing and managing interpreter services? Are courts effectively providing treatment for domestic violence perpetrators? Are courts providing outcomes that are fair and just to all people regardless of their race, gender, or language background? These questions require answers that can only be provided through research and addressed through policy implementation measures and judicial education by the Commissions.

Appropriate Staffing and Support

Over the years we have experienced time and time again the lack of resources and support to be able to study these very important issues within our justice system. Without funding this position we will not see or realize the changes that we are hoping to see to create a more fair and just system. Until we appropriately staff and support the Commissions and WSCCR we will not see change.

What is the impact on other state agencies?

Other state agencies rely on this type of data from the courts to better understand systemic inequities that exist within our system of government as a whole. The courts are just one institution that is related to and has impacts in many other institutions, like education, healthcare, social services, law enforcement, and many others. Each institution has an impact on one another and on our society as a whole. Each system plays a part in contributing to systemic inequities, and until we as a court system do our part to better understand the impacts we are having on people, particularly people of color, women, and other historically marginalized groups, we won't be able to see change.

What is the impact to the Capital Budget?

This request is for less than \$200,000. It is not likely to impact the Capital Budget.

Is change required to existing statutes, Court rules or contracts?

No

Is the request related to or a result of litigation?

No

What alternatives were explored by the agency and why was this option chosen?

The agency does not have additional funds to be able to support an added FTE. Although temporary funding from the legislature or grants has been helpful, it is ending and is unlikely be available again. We have also found that sporadic funding has been inefficient (e.g., due to repetitive ramp-up work required when a project stops and starts up again a year later) and inadequate to address these issues.

What are the consequences of not funding this request?

Inequities will continue to persist, change will be slower to be realized. Only every 10 years or more will we see how far we've come with any changes. In the case of the Gender Justice Study, it has been thirty years since an evaluation of gender bias in the courts was last funded. If we can't continue to assess implemented recommendations, we will not know whether those recommendations or changes had any impact. We won't have the ability to take compounding steps to realize change because we won't have the tools or resources to be able to track our progress. Without the ability to track our progress through research, the money and efforts we make may not make the difference that is intended because we won't be able to see how we're doing and adjust accordingly.

The larger impact is on our state citizens. Inequities in any system have true social system and individual personal costs and are the reason for ongoing disparities.

How has or can the agency address the issue or need in its current appropriation level?

No

Other supporting materials: Please attach or reference any other supporting materials or information that will further help explain this request.

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

☒ No

☐ Yes



Handle with Care Initiative



In 2009, the Office of Juvenile Justice & Delinquency Prevention published a study on U.S. children's exposure to violence. The study examined the prevalence of children's exposure to violence in their homes, schools and communities. On September 23, 2010, Attorney General Eric Holder launched the Defending Childhood initiative to address a national crisis: the exposure of America's children to violence as victims and/or witnesses.

In 2011, a taskforce was created in West Virginia to explore programming to address and minimize children's exposure to violence and to identify systems and policies that could help mitigate the negative effects of trauma on children. The taskforce researched multiple programs, including the Safe Start Initiative, which was developed by the Office of Juvenile Justice and Delinquency Prevention in partnership with the Department of Justice and Department of Health and Human Services. The goal of the initiative was to "prevent and reduce the impact of family and community violence on young children and their families."

Elements of the Safe Start Initiative were selected by the taskforce in West Virginia and incorporated into a new, low-cost initiative commonly referred to as Handle with Care. The main goal of Handle with Care is to create a school environment where children can learn and feel safe. This is achieved by:

1. preventing children's future exposure to trauma and violence,
2. mitigating negative impacts experienced by children exposed to violence and trauma, and
3. increasing knowledge and awareness of how trauma and violence impacts a developing brain and how adults can support children's well-being through positive words and actions.

Why Handle with Care?

Handle with Care aims to formalize and improve consistent communication between first responders (law enforcement and fire department) and school staff. The purpose of this communication is to:

- strengthen the relationship between first responders, school staff and students.
- provide notification to the school that a child has experienced something that may alter the way they act or perform at school in the following days and weeks.
- serve as a reminder for school staff to use trauma-informed interventions when responding to children.
- identify children who are experiencing trauma and provide necessary support.

In partnership with



Safe Start Initiative

The Safe Start Initiative was previously piloted in nine communities across the nation, including Spokane, Wash., from 2000 to 2005. The initiative demonstrated positive outcomes at each site but was discontinued in Spokane due to limited financial capacity.

Unfortunately, Spokane County's rates of domestic violence and child abuse and neglect continue to climb with wide-ranging impacts on the community. More details can be found in The Spokane Regional Health District's Data Center report,

"Confronting Violence,"
<https://srhd.org/media/ocuments/Confronting-Violence-Low-Res.pdf>.

For More Information

Annie Murphey
Executive Director SRDVC
amurphey@srdvc.org
Jennifer Hansen
Health Program Specialist
jhansen@srhd.org

What is a Sample Handle with Care Process?

First Responders

Initially, first responders would:

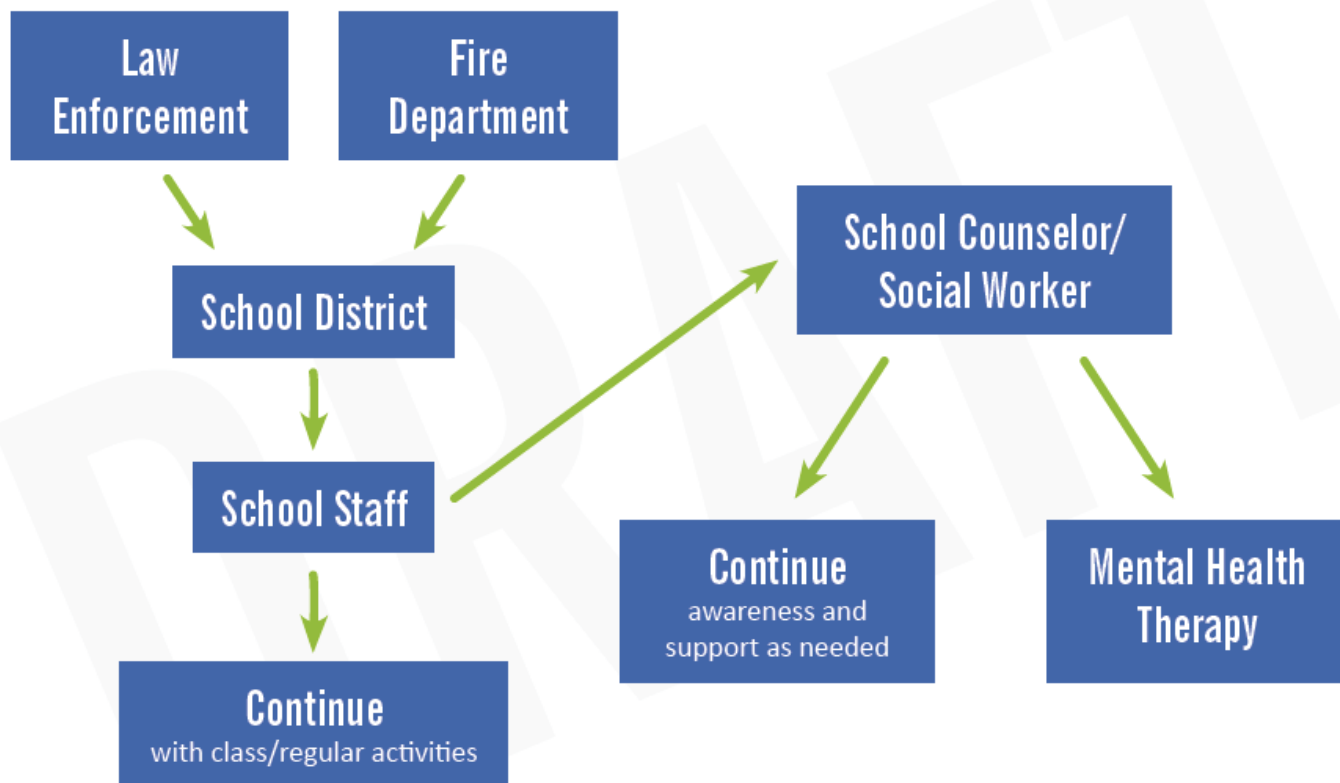
- arrive on scene, attend to immediate needs and identify if a school-age child is present.
- engage with the child using a trauma-informed approach and assess if the child experienced or witnessed a traumatic event.
- find out the child's name, age and school.
- call 354-SAFE (7233) to leave a simple message, saying only the child's name and the following three words: "handle with care."
- document that a Handle with Care call was made, number of children and ages of children.

Schools

Once the Handle with Care message is received, school staff will:

- document call details, fill out a "Handle with Care" notification and distribute to all school staff that interact with the child who was the subject of the Handle with Care call.
- be aware that a student has experienced a traumatic event and may need additional care.
- respond to the student in a gentle, trauma-informed way.
- observe the student(s) and, if warranted, the school counselor will reach out to the student and family.
- provide on-site counseling for student and family if necessary.
- document demographic information and the outcomes of the Handle with Care call, noting whether additional counseling is needed and if disciplinary actions had to be taken (disciplinary actions should also be documented).

Handle with Care PROCESS



Gender Based Violence Training for Law Enforcement by State				
State/Territory	Accountable Body	Minimum Basic Training	GBV Training	CE
Alabama	Alabama Peace Officers Standards & Training Commission	520 hours	Domestic violence - 4 hours Sex crimes - 4	No required CE on GBV.
Alaska	Alaska Police Standards Council	650 hours	Domestic Violence - 12 hours Sexual Assault - 12 hours	The Alaska Council on Domestic Violence and Sexual Assault mandates that employers of state or local public employees provide CE in domestic violence for employees that encounter people involved with domestic violence.
Arizona	Arizona Peace Officer Standards and Training Board	585 hours	Domestic violence and sex crimes investigation required, but no min. hours.	No required CE on GBV.
Arkansas	Arkansas Commission on Law Enforcement Standards & Training	520 hours	Domestic Violence - 20 hours Sexual Assaults - 20 hours	No required CE on GBV.
California	California Commission on Peace Officer Standards and Training	664 hours	Domestic Violence - 10 hours Sex Crimes - 4 hours	There is mandated continuing education on domestic violence, but no minimum hour requirement.
Colorado	Colorado Peace Officer Standards and Training	556 hours	Domestic Violence - 8 hours Sexual Assault - 4 hours	No required CE on GBV.
Connecticut	Connecticut State Police Officer Standards and Training Council	871 hours	Domestic Violence Response - 16 hours Sexual Assault/Rape Crisis - 4 hours Gambling, Prostitution, Organized Crime, and Human Trafficking - 4 hours	Every 3 years there is required continuing education that includes 2 hours on domestic violence and 2 hours on rape crisis.
Delaware	Delaware Council on Police Training	584 hours	Domestic Violence - 8 hours Sex Crimes - 4 hours	Patrol officers must receive at least 1 hour of training on child physical and sexual abuse, exploitation, and domestic violence every 3 years and 2 hours of training on sexual assault every 4 years.

District of Columbia	DC Police Officers Standards and Training Board	No minimum training hours.	Intra-family Offenses - at least 20 hours	No required CE on GBV.
Florida	Florida Criminal Justice Standards & Training Commission	770 hours	None	No required CE on GBV.
Georgia	Georgia Peace Officer Standards and Training Council	408 hours	Family Violence, Domestic Disputes, and Disturbance Calls - 4 hours Sex Crimes Investigation - 4 hours	No required CE on GBV.
Hawaii	No statewide board for training and certification standards	Hawaii passed a bill in 2018 creating a Law Enforcement Standards Board for the first time. Currently the police departments are accredited by the Commission on Accreditation for Law Enforcement Agencies, a private, non-profit corporation. Because of this		
Idaho	Idaho Peace Officer Standards & Training	No minimum training hours.	None	No required CE on GBV.
Illinois	Illinois Law Enforcement Training and Standards Board	560 hours	The curriculum must include training on domestic violence and sexual assault, but there are no minimum hour requirements.	Officers must receive training on domestic violence every 5 years and training on sexual assault every 3 years, though neither training has a minimum hour requirement.
Indiana	Indiana Law Enforcement Training Board	480 hours	Domestic Violence and Sexual Assault - 8 hours	No required CE on GBV.
Iowa	Iowa Law Enforcement Academy	608 hours	Domestic Violence - 13 hours Sexual Abuse Investigation - 9 hours Human Trafficking - 3 hours Stalking - 2 hours	No required CE on GBV.
Kansas	Kansas Commission on Peace Officers' Standards and Training	560 hours	Domestic Violence Intervention - 17 hours Sexual Offenses - 6 hours	No required CE on GBV.

Kentucky	Kentucky Law Enforcement Council	768 hours	Basic training must include at least 8 hours of training on sexual assault and an unspecified number of hours on domestic violence and human trafficking.	Officers must complete training on domestic violence every 2 years, but the number of hours is no specified.
Louisiana	Louisiana Peace Officer Standards and Training Council	400 hours	Officers must complete a sexual assault awareness program and a domestic violence awareness training program, but there is no minimum hour requirement.	No required CE on GBV.
Maine	Maine Criminal Justice Academy Board	720 hours	Domestic Abuse - 12 hours Sex Offenses - 2 hours	CE subjects change year to year.
Maryland	Maryland Police and Correctional Training Commissions	750 hours	None	Officers must complete continuing education on sexual assault every 3 years, but there is no minimum hour requirement.
Massachusetts	Massachusetts Municipal Police Training Committee	800 hours	The training includes 12 hours on domestic violence and mandatory courses on sexual assaults and human trafficking, but the specific hour requirement cannot be accessed.	CE subjects change year to year.
Michigan	Michigan Commission on Law Enforcement Standards	594 hours	Domestic Violence - 14 hours	None

Minnesota	Minnesota Board of Peace Officer Standards and Training	No minimum training hours.	The learning objectives include sections on domestic violence response and investigation and sexual assault response and investigation, but there are no minimum hour requirements for these sections.	No required CE on GBV.
Mississippi	Mississippi Board on Law Enforcement Standards and Training	400 hours	None	No required CE on GBV.
Missouri	Missouri Peace Officer Standards and Training	600 hours	Domestic Violence - 32 hours Sexual Investigation - 4 hours	No required CE on GBV.
Montana	Montana Public Safety Officer Standards and Training Bureau	480 hours	None	No required CE on GBV.
Nebraska	Nebraska Police Standards Advisory Council	636 hours	None	No required CE on GBV.
Nevada	Nevada Commission on Peace Officer Standards and Training	480 hours	The course includes training on domestic violence, stalking, and aggravated stalking, but there is no minimum hour requirement.	No required CE on GBV.
New Hampshire	New Hampshire Police Standards & Training Council	No minimum training hours.	None	No required CE on GBV.
New Jersey	New Jersey Police Training Commission	No minimum training hours.	The performance objectives include training on the Prevention of Domestic Violence Act, sex offender notification, human trafficking, and sex crimes investigation, but there is no minimum hour requirement.	Mandatory 4 hours of CE on domestic violence annually.
New Mexico	New Mexico's Police Officer Standards and Training Agency	675 hours	Domestic Issues - 20 hours Sex Crimes - 3 hours	Mandatory 1 hour of CE on domestic violence annually.

New York	New York Municipal Police Training Council	654 hours	Domestic Violence - 14 hours Sex Crimes - 2 hours Human Trafficking - 2 hours	No required CE on GBV.
North Carolina	North Carolina Criminal Justice Education & Training Standards Commission	640 hours	Domestic Violence Response - 16 hours Human Trafficking - 2 hours	CE subjects change year to year.
North Dakota	North Dakota Peace Officers Standards and Training	No minimum training hours.	None	No required CE on GBV.
Ohio	Ohio Peace Officer Training Commission	728 hours	Domestic Violence - 6 hours Human Trafficking - 6 hours	No required CE on GBV.
Oklahoma	Oklahoma Council on Law Enforcement Education and Training	600 hours	None	No required CE on GBV.
Oregon	Oregon Department of Public Safety Standards and Training	640 hours	None currently	No required CE on GBV.
Pennsylvania	Pennsylvania Municipal Police Officers' Education and Training Commission	919 hours	Domestic Violence - 8 hours Sexual Offenses and Human Trafficking - 4 hours	No required CE on GBV.
Rhode Island	Rhode Island Police Officers Commission on Standards and Training	953 hours	Domestic Violence and Sexual Assault - 13 hours	No required CE.
South Carolina	South Carolina Training Council	No minimum training hours.	None	Mandatory CE must include some training on domestic violence, but there is no minimum hour requirement.
South Dakota	South Dakota Law Enforcement Officers Standards and Training Commission	520 hours	Domestic Violence - 12 hours Sexual Assault Response - 4 hours	Every officer must attend a training on domestic abuse every 4 years.
Tennessee	Tennessee Peace Officer Standards & Training Commission	400 hours	The minimum requirements include training on crisis intervention in domestic disputes, but the exact number of training hours is not specified.	No required CE on GBV.

Texas	Texas Commission on Law Enforcement	643 hours	Family Violence and Related Assaultive Offenses - 20 hours Human Trafficking - 1 hour	No required CE on GBV.
Utah	Utah Peace Officer Standards and Training Council	No minimum training hours.	None	No required CE on GBV.
Vermont	Vermont Criminal Justice Training Council	941.5 hours	Domestic Violence Response - 22 hours Sexual Assault Investigation - 12 hours Stalking - 2 hours	No required CE on GBV.
Virginia	Virginia Criminal Justice Services Board	480 hours	The performance outcomes include training on family abuse and sexual assault investigations.	No required CE on GBV.
Washington	Washington State Criminal Justice Training Commission	720 hours	Domestic Violence - 14 hours Sex Offenses - 9 hours	No required CE on GBV.
West Virginia	West Virginia Law Enforcement Professional Standards Subcommittee	800 hours	The academy training curriculum is not available online, but the Law Enforcement Professional Standards Subcommittee lists essential functions that officers should be able to complete after training, including mediating family disputes and interviewing vi	No required CE on GBV.
Wisconsin	Wisconsin Law Enforcement Standards Board)	720 hours	Domestics - 16 hours Sexual Assault - 12 hours	No required CE on GBV.
Wyoming	Wyoming Peace Officers Standards and Training Commission	595 hours	The course does include training on domestic violence, but there is no minimum hour requirement.	No required CE on GBV.

American Samoa	American Samoa Department of Public Safety	The basic training curriculum is not available online, and there are no laws governing mandatory police training requirements.		
Guam	Guam Peace Officer Standards and Training Commission	No minimum training hours.	None	No required CE.
Northern Mariana Islands	Commonwealth of the Northern Mariana Islands Department of Public Safety Training and Professional Development Section	No minimum training hour requirement available online.	No information on mandatory training content online.	No required CE on GBV.
Puerto Rico	The Governor of Puerto Rico	900 hours	None	No required CE on GBV.
Virgin Islands	Virgin Islands Police Training Bureau	No minimum training hour requirement available online.	Domestic Violence - 20 hours 16 Virgin Islands Code § 99b.	The Virgin Islands Code mandates 12 hour in-service training programs for law enforcement hours that include sessions on domestic violence. 16 Virgin Islands Code § 99b.
Federal	Federal Law Enforcement Training Accreditation Board	The curriculum for the Federal Law Enforcement Training Centers is not available online. 6 United States Code Annotated § 464.	Federal agencies must provide their officers with training on human trafficking. Code of Federal Regulations § 1100.29.	No required CE on GBV.

Appendix H

CrR 3.2¹ RELEASE OF ACCUSED

If the court does not find, or a court has not previously found, probable cause, the accused shall be released without conditions.

(a) Presumption of Release in Noncapital Cases.

Any person, other than a person charged with a capital offense, shall at the preliminary appearance or reappearance pursuant to rule 3.2.1 or CrRLJ 3.2.1 be ordered released on the accused's personal recognizance pending trial unless:

(1) the court determines that such recognizance will not reasonably assure the accused's appearance, when required, or

(2) there is shown a likely danger that the accused:

(a) will commit a violent crime, or

(b) will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice.

For the purpose of this rule, "violent crimes" are not limited to crimes defined as violent offenses in RCW 9.94A.030.

In making the determination herein, the court shall, on the available information, consider the relevant facts including, but not limited to, those in subsections (d) and (g) of this rule.

(b) Showing of Likely Failure to Appear--Least Restrictive Conditions of Release. If the court determines that the accused is not likely to appear if released on personal recognizance, the court shall impose the least restrictive of the following conditions that will reasonably assure that the accused will be present for later hearings, or, if no single condition gives that assurance, any combination of the following conditions:

(1) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;

(2) Place restrictions on the travel, association, or place of abode of the accused during the period of release;

(3) Require the execution of an unsecured bond in a specified amount;

(4) Require the execution of a bond with sufficient solvent sureties, or the deposit of cash in lieu thereof;

(5) Require the accused to return to custody during specified hours or to be placed on electronic monitoring, if available; or

¹ The proposed changes to CrR 3.2 are also applicable to section (e) of CrRLJ 3.2.

(6) Impose any condition other than detention deemed reasonably necessary to assure appearance as required. If the court determines that the accused must post a secured or unsecured bond, the court shall consider, on the available information, the accused's financial resources for the purposes of setting a bond that will reasonably assure the accused's appearance.

(c) Relevant Factors--Future Appearance. In determining which conditions of release will reasonably assure the accused's appearance, the court shall, on the available information, consider the relevant facts including but not limited to:

(1) The accused's history of response to legal process, particularly court orders to personally appear;

(2) The accused's employment status and history, enrollment in an educational institution or training program, participation in a counseling or treatment program, performance of volunteer work in the community, participation in school or cultural activities or receipt of financial assistance from the government;

(3) The accused's family ties and relationships;

(4) The accused's reputation, character and mental condition;

(5) The length of the accused's residence in the community;

(6) The accused's criminal record;

(7) The willingness of responsible members of the community to vouch for the accused's reliability and assist the accused in complying with conditions of release;

(8) The nature of the charge, if relevant to the risk of nonappearance;

(9) Any other factors indicating the accused's ties to the community.

(d) Showing of Substantial Danger--Conditions of Release. Upon a showing that there exists a substantial danger that the accused will commit a violent crime or that the accused will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice, the court may impose one or more of the following nonexclusive conditions:

(1) Prohibit the accused from approaching or communicating in any manner with particular persons or classes of persons;

(2) Prohibit the accused from going to certain geographical areas or premises;

(3) Prohibit the accused from possessing any dangerous weapons or firearms, or engaging in certain described activities or possessing or consuming any intoxicating liquors or drugs not prescribed to the accused;

(4) Require the accused to report regularly to and remain under the supervision of an officer of the court or other person or agency;

(5) Prohibit the accused from committing any violations of criminal law;

(6) Require the accused to post a secured or unsecured bond or deposit cash in lieu thereof, conditioned on compliance with all conditions of release. This condition may be imposed only if no less restrictive condition or combination of conditions would reasonably assure the safety of the community. If the court determines under this section that the accused must post a secured or unsecured bond, the court shall consider, on the available information, the accused's financial resources for the purposes of setting a bond that will reasonably assure the safety of the community and prevent the defendant from intimidating witnesses or otherwise unlawfully interfering with the administration of justice.

(7) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;

(8) Place restrictions on the travel, association, or place of abode of the accused during the period of release;

(9) Require the accused to return to custody during specified hours or to be placed on electronic monitoring, if available; or

(10) Impose any condition other than detention to assure noninterference with the administration of justice and reduce danger to others or the community.

(e) Relevant Factors--Showing of Substantial Danger. In determining which conditions of release will reasonably assure the accused's noninterference with the administration of justice, and reduce danger to others, including alleged victims, witnesses, or the community, the court shall, on the available information, consider the relevant facts including but not limited to:

(1) The accused's criminal record²;

(2) The willingness of responsible members of the community to vouch for the accused's reliability and assist the accused in complying with conditions of release;

(3) The nature of the charge;

(4) The accused's reputation, character, and mental condition;³

(5) The accused's past record of threats to victims or witnesses or interference with witnesses or the administration of justice;

(6) Whether or not there is evidence of present threats or intimidation directed to witnesses;⁴

(7) The accused's past record of committing offenses while on pretrial release, probation or parole;⁵ and

² RCW 10.99.045(b)(i)-(iii) requires the prosecutor at arraignment to provide the court with the defendant's criminal history that occurred in Washington or any other state or tribal jurisdiction and individual order history. For charges of DV, this factor is also supported by the ODARA, B-Safer, DVSI-R, and DV Bench Guide.

³ For charges of DV as to mental condition, also supported by B-Safer, Danger Assessment, DV Bench Guide.

⁴ For charges of DV as to present threats, also supported by ODARA, B-Safer, Danger Assessment, DV Bench Guide

⁵ For charges of DV, also supported by the ODARA, B-Safer, DVSI-R

(8) The accused's past record of use of or threatened use of deadly weapons or firearms, especially to victims or witnesses.⁶

(9) Additional Relevant Factors—Showing of Substantial Danger in Domestic Violence cases. In addition to the factors in subsection (e) (1) through (8) above, in determining which conditions of release will reasonably assure the accused's noninterference with the administration of justice, and reduce danger to others, including alleged victims, witnesses, or the community, the court shall, on the available information, consider the following compounding⁷ additional relevant facts in a case alleging domestic violence, including but not limited to:

- (a) Whether the accused has committed prior domestic violence assault or non-domestic violence assault that resulted in a police report or charges filed;⁸
- (b) Prior violation by the accused of restraining orders or protection orders;⁹
- (c) Whether the accused made a threat to harm or kill the victim or others as part of the current charge¹⁰;
- (d) Whether the accused confined the victim or prevented the victim from leaving the location as part of the current charge¹¹;
- (e) Whether the accused has more than one indicator of substance abuse;¹²
- (f) Whether there is a history of assault by the accused on the victim while she was pregnant¹³;

⁶ For charges of DV, also supported by B-Safer, Danger Assessment and DVSI-R; See also Bonomi, Amy E, et. al. *Intimate Partner Violence and Neighborhood Income: A Longitudinal Analysis*. Violence Against Women (2014) (The researchers, who studied domestic violence police reports of nearly 6,000 couples in Seattle during a two-year period, found that weapon use at the baseline event was a much stronger predictor of repeat abuse than neighborhood income.)

⁷ When scoring risk pursuant to the ODARA, the accused's risk of reoffending increases with the presence of each additional factor. Hilton, N. Z., Harris, G. T., Rice, M. E., Lang, C., Cormier, C. A., & Lines, K. J. *A brief actuarial assessment for the prediction of wife assault recidivism: The Ontario Domestic Assault Risk Assessment*. Psychological Assessment, 16, 267–275. (2004).

⁸ ODARA, B-Safer, DVSI-R

⁹ ODARA, B-Safer, DVSI-R; See also RCW 10.99.045(b)(iii)

¹⁰ ODARA, Danger Assessment, B-Safer

¹¹ ODARA

¹² ODARA, Danger Assessment, B-Safer, DVSI-R; See also, N. Zoe Hilton, Grant T. Harris, Marnie E. Rice, Carol Lang, Catherine A Cormier, Kathryn J. Lines, *A Brief Actuarial Assessment for the Prediction of Wife Assault Recidivism: The Ontario Domestic Assault Risk Assessment*, Psychological Assessment Vol 16, No. 3, 267-275 (2004). The researchers found that for each additional indicator of substance abuse there was a significant increase in the likelihood of re-assault. To simplify scoring, they dichotomized all questions. They found that the 0/1 indicator vs. 2+ indicators of substance abuse option was more predictive than other binary options (e.g., zero vs. 1+).

¹³ ODARA, Danger Assessment

- (g) Whether the accused and the victim have more than one child together¹⁴;
- (h) Whether the victim has a biological child with someone other than the accused¹⁵;
- (i) Victim concern of future assault by the accused¹⁶; and
- (j) Whether the victim is socially, geographically, or financially isolated.¹⁷

(g) Delay of Release. The court may delay release of a person in the following circumstances:

(1) If the person is intoxicated and release will jeopardize the person's safety or that of others, the court may delay release of the person or have the person transferred to the custody and care of a treatment center.

(2) If the person's mental condition is such that the court believes the person should be interviewed by a mental health professional for possible commitment to a mental treatment facility pursuant to RCW 71.05, the court may delay release of the person.

(3) Unless other grounds exist for continued detention, a person detained pursuant to this section must be released from detention not later than 24 hours after the preliminary appearance.

(g) Release in Capital Cases. Any person charged with a capital offense shall not be released in accordance with this rule unless the court finds that release on conditions will reasonably assure that the accused will appear for later hearings, will not significantly interfere with the administration of justice and will not pose a substantial danger to another or the community. If a risk of flight, interference or danger is believed to exist, the person may be ordered detained without bail.

(h) Release After Finding or Plea of Guilty. After a person has been found or pleaded guilty, and subject to RCW 9.95.062, 9.95.064, 10.64.025, and 10.64.027, the court may revoke, modify, or suspend the terms of release and/or bail previously ordered.

(i) Order for Release. A court authorizing the release of the accused under this rule shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform the accused of the penalties

¹⁴ ODARA; See also, N. Zoe Hilton, Grant T. Harris, Marnie E. Rice, Carol Lang, Catherine A Cormier, Kathryn J. Lines, *A Brief Actuarial Assessment for the Prediction of Wife Assault Recidivism: The Ontario Domestic Assault Risk Assessment*, Psychological Assessment Vol 16, No. 3, 267-275 (2004). The researchers found that for each additional child there was a significant increase in the likelihood of re-assault. To simplify scoring, they dichotomized all questions. They found that the 0/1 child vs. 2+ children option was more predictive than other binary options (e.g., zero vs. 1+). Similarly, the Washington Supreme Court held that a parent could petition for relief on behalf of her child in a civil case based upon her reasonable fear for her child due to previous threats. *Zavala v. Rodriguez*, 188 Wn.2d 586, 398 P.3d 1071 (2017).

¹⁵ ODARA, Danger Assessment; See also, *Zavala v. Rodriguez*, 188 Wn.2d 586, 398 P.3d 1071 (2017).

¹⁶ ODARA

¹⁷ ODARA

applicable to violations of the conditions imposed, if any, shall inform the accused of the penalties applicable to violations of the conditions of the accused's release and shall advise the accused that a warrant for the accused's arrest may be issued upon any such violation.

(j) Review of Conditions.

(1) At any time after the preliminary appearance, an accused who is being detained due to failure to post bail may move for reconsideration of bail. In connection with this motion, both parties may present information by proffer or otherwise. If deemed necessary for a fair determination of the issue, the court may direct the taking of additional testimony.

(2) A hearing on the motion shall be held within a reasonable time. An electronic or stenographic record of the hearing shall be made. Following the hearing, the court shall promptly enter an order setting out the conditions of release in accordance with section (i). If a bail requirement is imposed or maintained, the court shall set out its reasons on the record or in writing.

(k) Amendment or Revocation of Order.

(1) The court ordering the release of an accused on any condition specified in this rule may at any time on change of circumstances, new information or showing of good cause amend its order to impose additional or different conditions for release.

(2) Upon a showing that the accused has willfully violated a condition of release, the court may revoke release and may order forfeiture of any bond. Before entering an order revoking release or forfeiting bail, the court shall hold a hearing in accordance with section (j). Release may be revoked only if the violation is proved by clear and convincing evidence.

(l) Arrest for Violation of Conditions.

(1) Arrest With Warrant. Upon the court's own motion or a verified application by the prosecuting attorney alleging with specificity that an accused has willfully violated a condition of the accused's release, a court shall order the accused to appear for immediate hearing or issue a warrant directing the arrest of the accused for immediate hearing for reconsideration of conditions of release pursuant to section (k).

(2) Arrest Without Warrant. A law enforcement officer having probable cause to believe that an accused released pending trial for a felony is about to leave the state or has violated a condition of such release under circumstances rendering the securing of a warrant impracticable may arrest the accused and take him forthwith before the court for reconsideration of conditions of release pursuant to section (k).

(m) Evidence. Information stated in, or offered in connection with, any order entered pursuant to this rule need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(n) Forfeiture. Nothing contained in this rule shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

(o) Accused Released on Recognizance or Bail--Absence--Forfeiture. If the accused has been released on the accused's own recognizance, on bail, or has deposited money instead thereof, and does not appear when the accused's personal appearance is necessary or violated conditions of release, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for the accused's arrest.

Comment

Supersedes RCW 10.16.190; RCW 10.19.010, .020, .025, .050, .070, .080; RCW 10.40.130; RCW 10.46.170; RCW 10.64.035.

[Adopted effective July 1, 1973; amended effective July 1, 1976; September 1, 1983; September 1, 1986; September 1, 1991; September 1, 1995; April 3, 2001; September 1, 2002; September 1, 2015; February 28, 2017.]

Appendix I

Category	Danger Assessment	ODARA	B-SAFER	DVSI-R	DV Bench Guide	Court Rule 3.2
Barriers to support		✓				
Children	✓	✓				
Choke/strangle	✓				✓	
Confinement of victim		✓				
Controlling behavior	✓				✓	
Employment issues	✓		✓	✓		
Escalation	✓		✓	✓	✓	
Firearm	✓				✓	✓
Forced sex	✓		✓		✓	
Harm during pregnancy	✓	✓				
Jealousy	✓				✓	
Mental health			✓			✓
Negative attitudes			✓			
Perpetrator suicidality	✓		✓		✓	
Prior criminality/violence		✓	✓	✓	✓	✓
Prior incarceration		✓				
Relationship problems	✓		✓			
Stalking behavior	✓					
Substance use	✓	✓	✓	✓		
Threat to children	✓					
Threaten/intend serious violence	✓	✓	✓		✓	
Verbal/emotional abuse				✓		
Victim concern about future assaults		✓			✓	
Victim has other partners	✓					
Victim suicidality	✓					
Violation of court orders		✓	✓	✓		✓
Violence in front of children				✓		
Weapon	✓		✓	✓		✓
Community support						✓
Nature of the charge						✓
Perpetrator's reputation/character						✓
Victim interference						✓
Victim intimidation						✓

ODARA Scoring Form

A summary of ODARA scoring instructions is provided below for reference. The ODARA manual is found in Hilton, N.Z., Harris, G.T., & Rice, M.E. (2010). Risk assessment for domestically violent men: Tools for criminal justice, offender intervention, and victim services. Washington, DC: American Psychological Association.

Defendant Name: _____

SBI #: _____

Live Scan Verified? Yes ☐ No ☐

Agency Name: _____

ORI #: _____ **County:** _____

Agency Case #: _____

Officer Completing ODARA: _____

Index Assault Date: _____

ODARA Completion Date: _____

Defendant identifies as: Male ☐ Female ☐ **Victim identifies as:** Male ☐ Female ☐

Crime(s) Charged: _____

Administer ODARA when the following offenses are charged and the Victim is a Partner (as terms are defined below):

- | | |
|--------------------------------|---|
| • Homicide, 2C:11-1 | • Simple Assault, 2C:12-1a (w/contact or w/weapon) |
| • Aggravated Assault, 2C:12-1b | • Terroristic Threats, 2C:12-3 (w/contact or w/weapon) |
| • Kidnapping, 2C:13-1 | • False Imprisonment, 2C:13-3 (w/contact or w/weapon) |
| • Sexual Assault, 2C:14-2 | • Criminal Sexual Contact, 2C:14-3 |
| • Robbery, 2C:15-1 | • 2nd degree Burglary, 2C:18-2 (w/contact or w/weapon) |
| | • Any other crime involving risk of death or SBI, 2C:25-19a(18) |

DEFINITIONS

Index Assault: The most recent incident in which the person being assessed (Defendant, as defined below) assaulted his/her current or former Partner (as defined below). Assault is any act of violence that involved physical contact with the Victim (as defined below) or a credible threat of death made with a weapon displayed in the presence of the Victim.

Defendant: For the purposes of scoring ODARA, the Defendant is the person being assessed.

Victim: For the purposes of scoring ODARA, the Victim is the person upon whom the Index Assault was committed.

Partner: For the purposes of scoring ODARA, a Partner is a person who currently is, or previously was, involved with the Defendant in an intimate relationship. This includes current or former spouses, current or former intimate cohabitants, co-parents, and those currently or formerly in a dating relationship.

INSTRUCTIONS

- Score each Item as "1" if the evidence indicates that the Item is present and "0" if the evidence indicates that it is not present. The ODARA total score is the sum of the Item scores.
- If available documentation indicates that an Item might be present but the information is unclear or incomplete, then the Item may be treated as unknown or missing and scored as "?". In such cases, the Prorating Table should be used.
- The ODARA can be scored with up to 5 missing or unknown Items (scored as "?"). The ODARA cannot be interpreted if 6 or more items are scored as "?".

1. Confinement of the Victim at the Index Assault

SAMPLE QUESTION: *This time, did he/she do anything to prevent you from leaving the location?*

Confinement: Any act by the Defendant that physically prevents, or attempts to prevent, the Victim from leaving the scene of the assault.

- ✓ Count a charge of kidnapping, criminal restraint, or false imprisonment at the Index Assault.
- ✓ Examples: confining the Victim in a locked room, barring an exit.
- ✓ In locations without walls or doors, count actions taken to impede the Victim's active attempts to escape from the location.
- ✗ Do not include: any threats to harm the Victim if he/she leaves, pinning the Victim down in the course of an assault, cutting off the telephone, or confining persons other than the Victim.
- ✗ Do not include any confinement occurring before or after the Index Assault (i.e., during a separate incident).

ODARA Scoring Form

2. Threat to harm or kill anyone at the Index Assault

SAMPLE QUESTION: *This time, did he/she threaten to harm or kill you or anyone else?*

- ☐ ☐ ✓ Count any threat to harm or kill uttered at the Index Assault by the Defendant to cause bodily harm to any person other than the Defendant (i.e., do not count threats of self-harm or suicide).
 - ✓ Count bodily gestures commonly recognized as threats of physical harm, e.g., mimic shooting a gun or slashing a throat.
 - ✗ Threats involving only pets or property, or threats of non-bodily harm, do not count for this Item.
 - ✗ Do not include any threats occurring before or after the Index Assault.
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3. Victim concern about future assaults

SAMPLE QUESTION: *Are you concerned that he/she will assault you or the children again?*

Victim concern: Includes any statement made by the Victim that he/she is concerned, afraid, worried, or certain that the Defendant will assault him/her or the Victim's child(ren) in the future.

- ☐ ☐ ✓ This statement must be made by the Victim in the first report at or after the Index Assault. If no statement about Victim concern is present in a police report, a statement made by the Victim in the first report to victim support services can be counted.
 - ✗ Do not count the Victim's concern for safety, or the child(ren)'s safety, in the course of the Index Assault.
 - ✗ Do not include statements made by the Victim on a separate occasion before the Index Assault.
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-

4. Victim and/or Defendant have more than 1 child altogether

SAMPLE QUESTIONS: *How many children do you have? How many does your current Partner (Defendant) have?*

- ☐ ☐ ✓ Count the biological or adopted children of the Defendant.
 - ✓ Count the biological or adopted children of the Victim.
 - ✓ Count only living children, whether they are minors or adults, and whether they are living with the Victim, Defendant, or elsewhere. There must be a total of at least 2 children to score 1 for this Item.
-
-
-

5. Victim has a biological child with someone other than the Defendant

SAMPLE QUESTION: *Do you have a child from any previous relationships (other than with the Defendant)?*

To determine whether the Victim has a biological child from a previous partner:

- ☐ ☐ ✓ Count the children of the Victim, but count only the Victim's biological children whose other parent is not the Defendant.
- ✓ Count only living children, whether they are minors or adults, and whether they are living with the Victim, Defendant, or elsewhere.
- ✗ Do not count adopted children for this Item.

The Victim need only have 1 child with a previous partner to score 1 for this Item.

6. Assault on Victim while she was pregnant (at Index Assault or prior assault)

SAMPLE QUESTION: *Did he/she ever assault you when you were pregnant?*

- ☐ ☐ ✓ Include only assaults against the Victim. Do not count assaults against anyone other than the Victim.
 - ✓ Count the Index Assault or any prior assault on the Victim, committed by the Defendant, if the Victim was pregnant at the time.
 - ✓ The incident must include physical contact, the use or attempted use of a weapon to contact the Victim's body, or a threat of harm made while displaying a weapon. If you do not have a detailed description of the incident, count a charge of assault or other violent offense if it is known that the Victim was the Index Assault Victim and was pregnant at the time.
 - ✗ It is not required that the Defendant knew that the Victim was pregnant.
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-

ODARA Scoring Form

7. Two or more indicators of substance abuse

SAMPLE QUESTIONS: Did he/she drink alcohol just before or during this assault? Did he/she use drugs just before or during the assault?

Did he/she abuse alcohol or drugs in the past few days or weeks before this assault?

Did he/she abuse alcohol or drugs more than usual in the few days or weeks before the assault?

Before this assault, was he/she more angry or violent when he/she used drugs or alcohol?

Before this assault, had he/she ever been charged for something he/she did when drinking?

Before this assault, had he/she had an alcohol or drug problem any time since he/she was 18?

Substance abuse indicators: More than 1 indicator of substance abuse is needed to score 1 for this Item. Count any 2 of these specific indicators pertaining to the Defendant.

- ✓ The Defendant consumed alcohol or used drugs immediately before or during the Index Assault.
- ✓ The Defendant abused drugs and/or alcohol in the days or weeks before the Index Assault (e.g., alcohol intoxication, frequent alcohol use, use of street drugs, misuse of medication).
- ✓ The Defendant noticeably increased his/her abuse of drugs and/or alcohol in the days or weeks before the Index Assault (without a return to normal consumption prior to the Index Assault).
- ✓ The Defendant had been more angry or violent when using drugs and/or alcohol before the Index Assault.
- ✓ The Defendant consumed alcohol before or during an offense (including driving while intoxicated) pre-dating the Index Assault.
- ✓ From age 18 to the time of the Index Assault, the Defendant's alcohol use resulted in problems or interference in his/her life; this can include alcohol use related to violations of the law resulting in a charge or revocation of conditional release, withdrawal symptoms, inability to decrease use, or problems attributable to alcohol use (such as financial, job, relationship, legal, or health problems).
- ✓ From age 18 to the time of the Index Assault, the Defendant's illicit or street drug use or misuse of prescription drugs resulted in some problems or interference in his/her life; this can include drug use related to violations of the law resulting in a charge or revocation of conditional release, withdrawal symptoms, inability to decrease use, or problems attributable to drug use (such as financial, job, relationship, legal, or health problems).
- ✗ Do not include medications taken as prescribed.

8. Victim faces at least 1 barrier to support

SAMPLE QUESTIONS: Do you have any children at home for whom you provide care?

Do you live in a home with no phone?

Do you live where there is no access to transportation?

Barriers to support: Count any of these specific circumstances faced by the Victim. Circumstances not included in this list do not count.

- ✓ The Victim has 1 or more children age 18 or under who live with the Victim and for whom the Victim provides care.
- ✓ The Victim has no telephone, e.g., no mobile, cell, or landline in the home.
- ✓ The Victim has no access to a vehicle, no access to public transportation near his/her home, and no money for a taxi.
- ✓ The Victim lives in a rural area with nobody living close by.
- ✓ The Victim consumed alcohol or drugs just before or during the Index Assault, or the Victim has a history of alcohol or drug abuse (e.g., alcohol intoxication, frequent alcohol use, use of street drugs, misuse of prescription medication).
- ✗ Do not include medications taken as prescribed.

The Victim need only experience 1 of these barriers to score 1 for this Item.

9. Prior violent incident against a non-domestic victim

SAMPLE QUESTIONS: Is he/she violent toward people other than you and the children? Does he/she fight with or hit others?

Prior violence against a non-domestic victim: Defendant assaulted any person who is not a Partner or Partner's child.

- ✓ A specific incident is required, but unlike Item 11, presence in a police report or criminal record is not required.
- ✓ The incident must include physical contact, the use or attempted use of a weapon to contact the person's body, or a threat of harm made while displaying a weapon.
- ✓ The violent incident must have occurred on a separate occasion, before the Index Assault. Information can come from sources other than criminal justice documentation, and the incident does not need to be known to the police.

ODARA Scoring Form

10. Prior domestic incident of assault in a police report or criminal record (against current or former Partner or Partner's child)

- ☐ Prior domestic: The Defendant previously assaulted a Partner or a Partner's child, and it is recorded in a police report or criminal record.
- ✓ The incident must include physical contact, the use or attempted use of a weapon to contact the victim's body, or a threat of harm made while displaying a weapon. If you do not have a detailed description of the incident, count a charge of assault or other violent offense against a Partner or Partner's child as a domestic incident. (Note: a charge is not required.)
 - ✓ The prior incident must have been reported to the police.
 - ✓ The prior incident must have occurred on a separate occasion, before the Index Assault. If the Index Assault is part of a cluster of assaults documented in 1 police report, count any domestic assault against a Partner or Partner's child that occurred at least 24 hours before the Index Assault as a prior domestic incident.
 - ✗ Incidents involving only pets or property do not count for this Item.
-
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-

11. Prior non-domestic incident of assault in a police report or criminal record (against any person other than a Partner or a Partner's child)

- ☐ Prior non-domestic: The Defendant previously assaulted any person who is not a Partner or a Partner's child, and it is recorded in a police report or criminal record. This Item differs from Item 10 only in who the assaulted person is.
- ✓ The incident must include physical contact, the use or attempted use of a weapon to contact the victim's body, or a threat of harm made while displaying a weapon. If you do not have a detailed description of the incident, count a charge of assault or other violent offense against someone other than a Partner or a Partner's child as a non-domestic incident. (Note: a charge is not required.)
 - ✓ The incident must have been reported to the police.
 - ✓ The incident must have occurred on a separate occasion, before the Index Assault. If the Index Assault is part of a cluster of assaults documented in 1 police report, count any non-domestic assault that occurred at least 24 hours before the Index Assault as a prior non-domestic incident.
 - ✗ Incidents involving only pets or property do not count for this Item.
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12. Prior custodial sentence of 30 days or more

- ☐ Prior custodial sentence: The final disposition for an offense committed by the Defendant, handed down before the Index Assault.
- ✓ The sentence itself must be for at least 30 days.
 - ✓ The Defendant must have been admitted to an adult or juvenile correctional facility, prison, or jail, but the Defendant need not have been in custody for the entire 30 days. Count the sentence, not the time spent in custody.
 - ✗ Do not include a sentence given for the Index Assault.
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13. Failure on current or prior conditional release (including bail, parole, probation, or pretrial release order) or conditions of a restraining order (TRO, FRO, DORO, SORO, SASPA, stalking)

- ☐ Conditional release failure: The conditional release must have been ordered before the Index Assault.
- ✓ If Defendant was on a conditional release at the time of the Index Assault, and no information is available about release conditions, count the Index Assault as a conditional release failure, because such releases typically require offenders to remain offense free.
 - ✓ The Defendant must have been at liberty in the community under supervision, monitoring, or other requirement ordered by a criminal court, or a no-contact order imposed by any court.
 - ✓ Any known violations of the conditional release or violations of release conditions count for this Item.
 - ✓ Any charges incurred while on conditional release count for this Item. Count any known failure, even if it did not result in a charge.
 - ✓ Examples: committing a new criminal offense; failing to appear for court; failing to attend a probation appointment; drinking when prohibited by court or probation; going to a person's home or work when prohibited; contacting a person when prohibited.
 - ✗ Do not include violations occurring after the Index Assault.
-
-
-

ODARA Scoring Form

Raw Score (sum of Items scored 1) _____
 Number of Missing or Unknown ("?") Items _____
ODARA Final Score (use Prorating Table if indicated) _____

PRORATING TABLE

Only use if 1 or more Items are scored as missing or unknown ("?"), indicating the Item might be present but the available documentation or information is unclear or incomplete. Note: The ODARA can be scored with up to 5 missing Items. The ODARA cannot be interpreted if 6 or more items are scored as "?"

Number of Missing Items					
Raw Score	1	2	3	4	5
0	0	0	0	0	0
1	1	1	1	1	2
2	2	2	3	3	3
3	3	4	4	4	5
4	4	5	5	6	7+
5	5	6	7+	7+	7+
6	7+	7+	7+	7+	7+

Note: If Raw Score is 7 or above, do not use the Prorating Table, and count the Raw Score as the Final Score.

ACTUARIAL TABLE

Final Score	Percent who score in this range	Percent scoring lower	Percent scoring higher	Percent who Recidivate
0	9	0	91	7
1	17	9	74	17
2	21	26	53	22
3	20	47	33	34
4	13	67	20	39
5-6	14	80	6	53
7-13	6	94	0	74

EXAMPLE FOR REPORTING ODARA SCORES: Defendant scored a 5 on the ODARA. As indicated in the ODARA norms, only 6% of men with a police report of domestic assault obtained higher scores. Over 53% of men in this group committed a new assault against a female Partner within an average of 5 years.

October 23, 2020

RE: WADOC Response Concerning Domestic Violence Risk Assessment

The Washington State Department of Corrections (WADOC) sent termination notices on all existing contracts with Washington State University (WSU)/Zachary Hamilton on July 1, 2020, with effective date of July 30, 2020. This letter describes the reasoning for this decision, specific to the contract *K12186: Domestic Violence Risk Assessment Tool*. This letter also describes WADOC's preferred method for successful and timely development of a domestic violence (DV) risk assessment tool for use by WADOC.

E2SHB 1517 states that a DV risk assessment tool was to be provided to WADOC no later than July 1, 2020. The contractor did not complete the work specified by E2SHB 1517 and WADOC contract *K12186: Domestic Violence Risk Assessment Tool*. There are also additional documented contract performance concerns (described below), and Dr. Hamilton's move to the University of Nebraska in June of 2020 required termination of existing contracts with WSU.

Dr. Hamilton, as the designated Principal Investigator (PI), submitted the research protocol to the Washington State Institutional Review Board (WSIRB) in November of 2019, although he did not submit the required data variable list (Appendix G.), thus the WSIRB could not immediately review the protocol. Submission of this important document is the responsibility of the PI. At the RDA Director's request, the WADOC/RDA contract manager contacted Dr. Hamilton in January 2020 for a status update, and discovered that Dr. Hamilton hadn't submitted the required document. Also, the option to submit the WSIRB protocol for exempt determination was suggested by WADOC/RDA in October of 2019, but was denied by Dr. Hamilton, presumably to allow for academic publication of the work as generalizable research. These actions on part of the PI resulted in the delay in obtaining WSIRB approval and authorization to start work. The COVID-19 pandemic did not delay the operations of the WSIRB or WADOC/RDA during this time.

Approval for the project was obtained from the WSIRB in April of 2020. On May 14, 2020, the WADOC Research & Data Analytics unit (RDA) discovered that Dr. Kigerl, Dr. Hamilton's statistician, utilized WADOC data authorized under a different contract for this project without approval of the WSIRB or WADOC. WADOC/RDA emailed Dr. Kigerl on May 14, 2020 to offer assistance. That same week, RDA staff assisted Drs. Hamilton and Kigerl regarding the data tables after it became clear to RDA staff that the contractor did not have the needed data or adequate understanding of the data tables required for the DV risk assessment tool development. With the assistance of WADOC RDA, Dr. Hamilton made a new request for data on May 18, 2020, and a revised WSIRB variable authorization list (Appendix G.) was submitted by Dr. Hamilton on May 29, 2020.

Dr. Hamilton, who was a member of the E2SHB 1517 DV Work Group, the WSU contract manager, and WSIRB PI, did not notify the WADOC contract manager of intent to not complete work under the existing WADOC contract or move work to a new contract through the Administrative Office of the Courts (AOC). Also, a contract progress report submitted by Dr. Hamilton on April 29, 2020, did not include information regarding intent for a move to the AOC. The RDA Director was notified of the intent to move the contract during a phone call meeting on May 26, 2020. It was disclosed by Dr. Hamilton at this time that this move from WSU would occur by June 30, 2020, prior to the original anticipated contract end date of September 30, 2020.

In summary, it is evident from the documentation (e.g., contractor email correspondence and other documentation) that the delay in progress of the DV risk assessment tool development are due to contractor performance.

The department acknowledges the important work of the E2SHB 1517 DV Work Group, and shares interest in addressing community safety by prioritizing DV risk assessment and treatment programming.

The department therefore recommends the following course of action:

- Consult with leading domestic violence risk assessment experts to obtain scientific consensus on options and best approach for a DV risk assessment tool to be used by WADOC.
- Following a scientific consensus review, issue a Request for Funding Proposals (RFP) for DV risk assessment tool to be integrated into WADOC operations. This process affords the department the ability to take into consideration contractor performance, qualifications, and other factors necessary to successful tool development and integration.
- Write the contract such that the contractor shall conduct tool development work under the oversight of the WADOC. This will help ensure appropriate use the data, understanding of operational needs of the tool, and its integration into existing procedures. Further, this affords the department the opportunity to adequately update the workgroup on contractor performance issues related to development, data usage, operational needs, and integration. In addition, a requirement for thorough documentation will allow for future independent review and transparency regarding the tools' function.
- Following established standards for psychometric tool development, allow for adequate time for testing and validation of the DV risk assessment tool in Washington before full implementation. To do otherwise with a novel tool creates significant legal and ethics risks.
- Adequate funding was never allocated to implement a DV risk assessment tool. Funding will be required to test and fully implement the newly selected/developed tool.