

SHB 1715: Enacting comprehensive protections for victims of domestic violence and other violence involving family members or intimate partners

The Washington Defender Association and the Washington Association of Criminal Defense Lawyers are strongly opposed to this sweeping legislation which, among other concerning things, institutes the use of victim-focused lethality assessments to be used against accused persons in civil and criminal proceedings. These may be meaningful tools for supporting some victims of intimate partner violence (IPV) in obtaining services and safety planning.¹ This legislation, however, is mandating the use of them in ways that were not contemplated or validated – to create a future dangerousness *high lethality designation* to be applied to accused respondents and defendants, with numerous concerning legal implications. The impact of this legislation will fall most harshly on BIPOC respondents and defendants without actually increasing safety for victims of intimate partner violence, and there is no recourse for error or future removal of the designation.

What is a lethality assessment or danger assessment? A victim-focused risk assessment and intervention tool used as a *public health solution* to IPV. The lethality instrument is used in determining who is a High Danger *victim* (not perpetrator). Once a High Danger *victim* has been identified, the first responder's role is to immediately connect the victim via a hotline with local DV services for safety planning in a “warm handoff” to close the gaps between victims and the services they need. It is important to note that these studies use terms such as “femicide” “pregnancy” and “male perpetrator” which makes it clear that the data is based on opposite-sex relationships with a male perpetrator and female victim.

How accurate are these assessments? They do not have perfect predictive validity. They produce *false positives*, meaning that *cases are misidentified as high risk*. The DA/LAP was not designed for perfect predictive validity. It was designed to make sure women at high risk of being killed by an intimate partner are connected to services because the costs of screening someone into victim interventions (education and advocacy programs) are much lower than screening them out.

What is the problem with using a victim-focused model in law enforcement, prosecution and civil and criminal proceedings? The concerns are many.

- The bill is focused on using the LA primarily as a tool to categorize alleged offenders with a high lethality designation. This is evocative of sex offender registration categories, but with none of the due process protections of the sex offender registration laws.
- The designation is based solely upon the determination of an evaluator who uses only the statements of the alleged victim and any criminal history provided by law enforcement.
- The assessment may be performed with the assistance of law enforcement, which may influence the answers given by the victim.
- The assessment is provided to law enforcement, prosecutors, and courts and the designation is in court and law enforcement databases with no opportunity to contest it or remove it provided in this proposed legislation. Rep. Mosbrucker’s proposals for some such modifications to the bill failed in committee.

¹ <https://www.mnadv.org/wp-content/uploads/2021/02/LAP-Effectiveness-Position-Paper.pdf>;
<https://nij.ojp.gov/topics/articles/closer-look-lethality-assessment-program>;
<https://vawnet.org/material/lethality-assessment-tools-critical-analysis>;
<https://www.aannet.org/initiatives/edge-runners/profiles/edge-runners--profiles-danger-assessment>;
<https://journals.sagepub.com/doi/10.1177/1524838018821952>

- The designation is used in civil protection order proceedings where the respondent does not have a right to counsel and in pretrial criminal proceedings where there exists a right to counsel. There is no ability to challenge the designation, which does not comport with due process or the presumption of innocence in criminal cases.
- It will result in the deprivation of the second amendment right to possess firearms, even by persons who have never been charged with or found guilty of any firearm or assault offenses.
- It will result in expensive, perhaps prohibitively so, requirements like electronic monitoring with victim notification and attorney fees being ordered regardless of ability to pay in civil proceedings.
- It creates a new invasion of privacy, allowing a court to authorize an order for the search and seizure of any firearm or weapon at any location the court decides in violation of the Fourth Amendment right to be free from unconstitutional searches and seizures, the Fifth Amendment right to remain silent, and the Sixth Amendment right to counsel.

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