

From: Violeta Navarro  
To: TACs  
Date: July 28, 2022  
Subject: 2022 Legislative Changes

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[Sending on behalf of the Firearms Background Division](#)

Hello,

You should have received two emails regarding NICS changes for Alien Firearm License (AFL) and RCW 7.105.325 NICS Indices Entry for Protection Orders. These have been placed on the ACCESS webpage under the Announcements drop down if you would like to review them:

<http://www.wsp.wa.gov/secured/access/access.htm>

Below is a summary of the legislative changes in 2022 that relate to NICS.

## *Overview*

This update covers three legislative bills that went into effect this summer. A combination of two bills passed by legislature in the past two years affects our state's Misdemeanor Crimes of Domestic Violence (MCDV) and Protection Order prohibitors. The third bill relates to the federal drug prohibitor as it changes our state's use of the term "marijuana" to "cannabis".

- Engrossed Second Substitute House Bill 1320 (E2SHB 1320)  
Passed: April 14, 2021  
Effective: July 1, 2022
  - Combines multiple Washington State's civil protection orders into a single chapter, Revised Code of Washington (RCW) 7.105.
  - Condenses these types of protection orders into a single form that can be used for nearly all types of protection orders.
  
- Substitute House Bill 1901 (SHB 1901)  
Passed: March 8, 2022  
Effective: July 1, 2022
  - Updates our state's definitions of:
    - Domestic violence, as now defined in RCW 7.105.010(9)  
"Domestic violence" means:  
(a) Physical harm, bodily injury, assault, or the infliction of fear of physical harm, bodily injury, or assault; nonconsensual sexual conduct or nonconsensual sexual penetration; coercive control; unlawful harassment; or stalking of one intimate partner by another intimate partner; or  
(b) Physical harm, bodily injury, assault, or the infliction of fear of physical harm, bodily injury, or assault; nonconsensual sexual conduct or nonconsensual sexual penetration; coercive control; unlawful harassment; or stalking of one family or household member by another family or household member.

- Intimate partner, as now defined in RCW 7.105.010(20)  
"Intimate partner" means: (a) Spouses or domestic partners; (b) former spouses or former domestic partners; (c) persons who have a child in common regardless of whether they have been married or have lived together at any time, unless the child is conceived through sexual assault; or (d) persons who have or have had a dating relationship where both persons are at least 13 years of age or older.
    - Renumbers several subsections within RCW 9.41.040.
    - Changes the relationship requirements for Washington's MCDV prohibitor.
    - Changes our state's protection order prohibitor to mirror the requirements of Brady.
    - RCW 7.105.325 requires that law enforcement agencies enter protection orders with firearm restrictions from the court into the NICS Indices. *(An email of this update was sent out on 7/25/2022)*
- Second Substitute House Bill 1210 (2SHB 1210)  
Passed: February 2, 2022  
Effective: June 9, 2022
  - Replaces the term "marijuana" with "cannabis" throughout Washington's RCWs.
  - The current Washington State Medical Marijuana Recognition Cards will be renamed as "Washington State Medical Cannabis Recognition Card".

## Washington State MCDV Prohibitor

RCWs 9.41.040 (2)(a)(i) is one of our state's MCDV prohibitors and covers the following misdemeanor crimes:

- Assault in the fourth degree
- Coercion
- Stalking
- Reckless endangerment
- Criminal Trespass in the first degree
- Violation of the provisions a protection order or no-contact order (RCW 26.50.060, 26.50.070, 26.50.130, or 10.99.040)

As of July 1, 2022, (2)(a)(i) includes an update regarding qualifying relationships, based on the update in SHB 1901:

- RCW 9.41.040 (2)(a)(i) "After having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any felony not specifically listed as prohibiting firearm possession under subsection (1) of this section, or any of the following crimes when committed by one family or household member against another or by one intimate partner against another, **as those terms are defined by the statutes in effect at the time of the commission of the crime, committed on or after July 1, 1993...**"
  - The "DV" marker in a disposition on a Washington State criminal history return continues to prove that the crime meets the relationship requirement for our state's

MCDV prohibitor because the court determined at the time of the crime that the relationship qualified.

- If there is no DV marker included on the disposition, research is required.
  - As before, court documents can be used to prove the relationship. Police and incident reports cannot.
    - The relationship between the defendant and victim must meet the definition of those terms as they were defined at the time of the crime.
  - Court documents still cannot be used to prove relationship if the removal of a DV marker was the result of a plea agreement.
- SHB 1901 adds an additional qualifying MCDV crime under RCW 9.41.040(2)(a)(iii):
  - The violation of the provisions of a protection order or no-contact order now reads as “...or violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence (RCW 10.99.040 or any of the former RCW 26.50.060, 26.50.070, and 26.50.130)...
    - This is to ensure that a conviction for the violation of protection orders that were issued prior to July 1, 2022, which also met the relationship requirements, would still be prohibiting for firearms.
    - SHB 1901 added additional verbiage to RCW 9.41.040 (2)(iii) for the conviction of the violation of those protection orders issued under RCW 7.105 on or after July 1, 2022.

## Washington State Protection Order Prohibitor

Prior to July 1, 2022, one way in which the firearms prohibitor of Protection Order Condition 07 (PCO/07) could be determined was by meeting the criteria found in RCW 9.41.040 (2)(a)(iii). As of July 1, 2022, SHB 1901 moved this prohibitor down one subsection, to 9.41.040 (2)(a)(iv). In addition, it updated the language to more closely match the federal requirements of Brady, as described below.

- As of July 1, 2022, Washington State firearm prohibitor PCO/07, can still be determined in three ways:
  - 1- It is written on the protection order that the individual is prohibited from purchasing or possessing firearms or other dangerous weapons, or it is indicated by a check box that they are ordered to surrender all firearms and/or concealed pistol licenses (CPLs).
  - 2- There is a separate Order to Surrender Form.
  - 3- The protection order meets under the following criteria for 9.41.040(2)(a)(iv):
    - A) “Was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate;
    - B) “Restrains the person from harassing, stalking, or threatening the protected person or protected person’s child or engaging in other conduct that would place the “protected person” in reasonable fear of bodily injury to the protected person or child; and
    - C) “(I) Includes a finding that the person represents a credible threat to the physical safety of the protected person or child **OR** by its terms explicitly prohibits the use,

attempted use, or threatened use of physical force against the protected person or child that would reasonably be expected to cause bodily injury...

“(II) Includes an order under RCW 9.41.800 requiring the person to surrender all firearms and prohibiting the person from accessing, having in his or her custody or control, possessing, purchasing, receiving, or attempting to purchase or receive, firearms;”

- **Relationship doesn’t need to qualify for PCO/07 as protected person isn’t defined in statute**
  - BRADY Federal Firearms prohibitor
    - Hearing/opportunity to be heard
    - Intimate partner
    - Restrains future conduct
    - Credible threat or physical force
  - As a result, anytime Brady qualifies for a protection order, PCO/07 will also qualify as long as the protection order was issued under one of the RCWs listed in RCW 9.41.040 (2)(a)(iv).
  - In addition, if everything in the order meets Brady with the exception of the relationship, it will qualify for PCO/07 as long as the protection order was listed in 9.41.040(2)(a)(iv).

### *Order to Surrender (OTS) Firearms RCW 9.41.800*

The RCW regarding the surrender of weapons or licenses, RCW 9.41.800, has also been updated to reflect the “or” rather than “and” language which is included in Brady:

- 9.41.800 (2)(c)(i): “Includes a finding that the party represents a credible threat to the physical safety of the intimate partner, protected person, child; **or** (ii) Includes an order under RCW 9.41.800 requiring the person to surrender all firearms and prohibiting the person from accessing, **having in his or her custody or control, possessing, purchasing, receiving, or attempting to purchase or receive, firearms;**”

If you have any questions please email [Firearms@wsp.wa.gov](mailto:Firearms@wsp.wa.gov).

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