

Family violence offences & Serial Family Violence Offenders

This sheet provides information about family violence offences and the consequences of committing them. It explains when a court may declare a person to be a Serial Family Violence Offender and the consequences of such a declaration.

Family violence offences

Anyone who commits a 'family violence offence' may face serious consequences, including the possibility of being declared a Serial Family Violence Offender, which also has serious consequences.

What is a 'family violence offence'?

You have committed a 'family violence offence' if you were in a '**designated family relationship**' with the victim at that time, the offence was **committed on or after 1 January 2021** and the offence is:

- A breach of a Family Violence Restraining Order or Violence Restraining Order under s61(1) or (1A) *Restraining Orders Act 1997 (WA)*; or
- An offence under the *Criminal Code (WA)* of:
 - Distribute intimate image – s221BD
 - Homicide - ss279 to 283
 - Offences endangering life or health or Grievous bodily harm – s292, s293, s294 or s297
 - Suffocation and strangulation - s298
 - Persistent family violence - s300
 - Wounding or assaults - s301 or s304, s313, s317 or s317A
 - Sex offences - ss323 to 326 or s328
 - Kidnapping or Deprivation of Liberty - s332 or s333
 - Threats or stalking - ss338A to 338C or s338E
 - Criminal damage – s444

What is a 'designated family relationship'?

If you and the victim:

- are, or were, married to each other, or

- are, or were, in a de facto relationship with each other, or
- have, or had, an 'intimate personal relationship' with each other,

then you are in a 'designated family relationship' with each other.

'Intimate personal relationship' means two people who:

- are engaged to be married or otherwise promised to be married under cultural or religious tradition, or
- date one another or have a romantic involvement, whether or not there is a sexual relationship.

If you commit any of the listed offences when you are in a 'designated family relationship' with the victim then you commit a 'family violence offence'.

Is it a 'family violence offence' if committed against any family member?

No, it is only a 'family violence offence' if you were in a 'designated family relationship' with the victim at the time of the offence. If the victim is a family member, but you were not in a 'designated family relationship' with them at the time of the offence, the offence is not a 'family violence offence'.

Consequences of committing a family violence offence

There are serious consequences if you commit a 'family violence offence', including:

- If you are convicted of a 'family violence offence' and you have previously committed family

violence offences, you may be declared a Serial Family Violence Offender (see below).

- If you are charged with a ‘family violence offence’ and you are a Serial Family Violence Offender, you will not be released on bail unless there are exceptional reasons; if you are to be released the court must get a home detention report and consider electronic monitoring as a condition of your bail.
- If you are convicted of a ‘family violence offence’ and you are a Serial Family Violence Offender, if the court gives you a community order it must consider electronic monitoring as a requirement of the order.
- If you are convicted of a ‘family violence offence’ and you are a Serial Family Violence Offender, if the court gives you a suspended or immediate imprisonment order, the offence must be declared a serious offence and a post-sentence supervision order may be imposed on you.
- If you are serving imprisonment for a ‘family violence offence’ and you are a Serial Family Violence Offender, if you are given a parole order, re-entry release order or post-sentence supervision order, the Prisoners Review Board must consider electronic monitoring as a requirement of the order.

Serial Family Violence Offender declarations

In certain circumstances, following an application by the prosecution or by the court itself, a criminal court may declare you to be a Serial Family Violence Offender.

If you have been charged with a ‘family violence offence’ **get legal advice** before you enter a plea, to ensure you fully understand the consequences that may apply to you.

The declaration will be recorded by the court for future reference and may appear on your criminal record. You will then be more easily identified by police and courts as someone with a history of family violence and you will be treated differently under the law.

How might I be declared a Serial Family Violence Offender?

A criminal court has the power under s124E *Sentencing Act 1995* (WA) to declare you to be a Serial Family Violence Offender if:

- it **convicts you of a ‘family violence offence’**,
AND
- counting that conviction, you then have:
 - **at least 3 convictions for any ‘prescribed offence’**,OR
- **at least 2 convictions for any ‘prescribed offence’ that is ‘indictable only’**.

‘Prescribed offence’ means:

- (i) A ‘family violence offence’, or
- (ii) An offence committed in another State or Territory, or overseas, or against a law of the Commonwealth, that would be a ‘family violence offence’ if committed in Western Australia, or
- (iii) An attempt to commit an offence as described under (i) or (ii) above.

The definition of ‘family violence offence’ is set out earlier in this information sheet.

An ‘indictable only’ offence is one that can only be dealt with on indictment, in the District or Supreme Court.

Strict rules apply to the counting of offences by the court, as follows:

- the offences must have been committed on different days,
- the offences must have been committed within 10 years of each other, unless the court is satisfied there are exceptional circumstances,
- at least one of the offences must have been committed in Western Australia,
- an offence committed when you were under 18 years old cannot be counted, and
- the offences may have been committed against the same or different victims.

At what stage of my case can an application for a declaration be made?

An application can be made as soon as you are convicted of the ‘family violence offence’ and any time up to when the court has finished the sentencing

process for that offence. This means an application can be made before you are sentenced, or after you are sentenced but before you are dismissed by the court to serve your sentence.

Once the application is made, the court may put off considering it to a later date. This is called 'adjourning' the application. This might happen if the court wants more information before it makes a decision, or if you tell the court you need more time to respond to the application.

The court may adjourn the application to a date that is after you have been sentenced for the 'family violence offence'.

Alternatively, the court may wish to decide the application before it sentences you. In this case, if it needs to adjourn the application it may also need to adjourn the date for your sentencing.

What will the court take into account in deciding whether to make a declaration?

If the court finds that you have committed the right number and type of offences to give it the power to make a declaration, it must decide whether a declaration is appropriate in your case.

When deciding whether to make a Serial Family Violence Offender declaration against you, the **court must consider**:

- how likely it is that you will commit another 'family violence offence',
- your criminal record, and
- the nature of the 'prescribed offences' that have been counted.

The court may obtain an expert report to help it to decide how likely it is that you will commit another family violence offence.

How should I respond to an application for a declaration?

Firstly, you should check the information provided to the court by the prosecution, in support of the application. That is, you should:

- Check your **criminal record** carefully to be sure it is accurate, before it is relied on by the court. If there are any inaccuracies that are relevant to the application for a declaration you should raise them with the court.

- Check the **summaries of facts** for the prescribed offences as provided by the prosecution in support of the application. Make sure they are the same facts that were used by the court when you were sentenced for those offences. If the summaries are not the same as the facts you were sentenced on, and you want the same facts to be taken into account by the court when considering the declaration, you can ask for the transcript of sentencing to be obtained. If the court agrees, it will put off the decision on the declaration until it has seen the transcript.

You should also check any **expert report** that is ordered by the court and let the court know if it contains any information that is incorrect, or that you say should not be taken into account when deciding how likely it is that you will commit another 'family violence offence'.

Finally, you should tell the court if there are very good reasons for you to hold a **firearms** or **explosives licence** or for you to apply for such a licence. This is because if you are declared a Serial Family Violence Offender, unless there are exceptional circumstances and the court grants you an exemption, any firearms or explosives licence you hold will be cancelled. Further, you will not be allowed to apply for such a licence for as long as the declaration is in place.

How long does a Serial Family Violence Offender declaration last?

A declaration made against you remains in place unless cancelled by a court. You may apply to have it cancelled after 10 years from the date the declaration is made.

When deciding whether to cancel the declaration the court will consider the same factors it considered when making the declaration, including whether you have committed further family violence offences since the declaration was made and how likely it is that you will commit further family violence offences.

Consequences of being declared a Serial Family Violence Offender

There are serious consequences if you are declared a Serial Family Violence Offender, including:

- If you are charged with a 'family violence offence', you will not be released on bail unless there are exceptional reasons; if you are to be released the court must get a home detention report and consider electronic monitoring as a condition of your bail.

- If you are convicted of another ‘family violence offence’ and the court gives you a community order, it must consider electronic monitoring as a requirement of your order.
- If you are convicted of a ‘family violence offence’ and the court sentences you to suspended or immediate imprisonment, the offence must be declared a serious offence and a post-sentence supervision order may later be imposed on you.
- If you are serving imprisonment for a ‘family violence offence’ and you are given a parole order, re-entry release order or post-sentence supervision order, the Prisoners Review Board must consider electronic monitoring as a requirement of the order.
- You are not allowed to hold or obtain a firearms or explosives licence while the declaration is in place, unless the court making the declaration grants you an exemption due to exceptional circumstances.

Where can I get legal advice?

You can pay a private lawyer to give you legal advice.

Alternatively, at the time you are appearing in the Magistrates Court for a ‘family violence offence’ you can get legal advice from a Legal Aid WA duty lawyer.

A duty lawyer can give you advice about your plea and explain the specific consequences to you if you are convicted of the offence.

A duty lawyer can also give you advice if you are facing an application to be declared a Serial Family Violence Offender.

Otherwise, you may be able to get advice from the Aboriginal Legal Service or another community legal services provider. See [Other places you can get legal help](#) on the Legal Aid WA website, under Get legal help.

Where can I get more information?

There is information on the Legal Aid WA website www.legalaid.wa.gov.au about:

- [Going to court on a criminal charge](#) (under Find legal answers> Crime)
- [Legal Aid WA Duty Lawyer Service](#) (under Get legal help> How we can help> Get help at court)
- [Legal Aid WA advice services](#) (under Get legal help> How we can help> Get legal advice)
- [Getting help from prison](#) (under Get legal help> How we can help> Get help from prison)
- [Other places you can get legal help](#) (under Get legal help>Other places you can get legal help)

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(for hearing and speech impaired)

Perth

32 St Georges Terrace
Perth, WA 6000
1300 650 579
(08) 9261 6222

Midwest & Gascoyne

Unit 8, The Boardwalk,
273 Foreshore Drive
Geraldton, WA 6530
(08) 9921 0200

West Kimberley

Upper Level, Woody's Arcade
15-17 Dampier Terrace
Broome, WA 6725
(08) 9195 5888

Great Southern

Unit 3, 43-47 Duke Street
Albany, WA 6330
(08) 9892 9700

Goldfields

Suite 3, 120 Egan Street
Kalgoorlie, WA 6430
(08) 9025 1300

East Kimberley Office

98 Konkerberry Drive
Kununurra, WA 6743
(08) 9166 5800

Southwest

7th Floor, Bunbury Tower
61 Victoria Street
Bunbury, WA 6230
(08) 9721 2277

Pilbara

28 Throssell Road
South Hedland, WA 6722
(08) 9172 3733

Indian Ocean

Administration Building
20 Jalan Pantai, Christmas Island
Indian Ocean, WA 6798
(08) 9164 7529

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