# Family violence offences and consequences

This resource provides information about the different categories of family violence offence. It describes some of the consequences of committing them, including being declared a Serial Family Violence Offender and being subject to electronic monitoring.

## About this information sheet

On 18 December 2024 family violence offences were split into two categories so that different consequences could be specified for each category.

This information sheet defines the two categories of family violence offence and describes some of the consequences of committing each category of offence. It explains when a Serial Family Violence Offender declaration might be made and how to respond when a court is considering making a declaration. It explains what electronic monitoring is and when it applies.

## What are the two categories of family violence offence?

Family violence offences are now described as either a 'category A family violence offence' or a 'category B family violence offence'.

### What is a 'category A family violence offence'?

You commit a 'category A family violence offence' if you are in a **'designated family relationship'** (defined below) with the victim at the time of the offence and the offence is any one of these under the *Criminal Code* (WA):

- 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
- Assaults or wounding - 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 'category B family violence offence'?

You are committing a 'category B family violence offence' if you are in a 'designated family relationship' (defined below) with the victim at the time of the offence and the offence is any one of these:

- 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
  - Assaults or wounding - 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'?

You are in a 'designated family relationship' with the victim if, at the time of the offence:

- you are, or were, married to the victim, or
- you are, or were, in a de facto relationship with the victim, or
- you have, or had, an 'intimate personal relationship' with the victim,
- either you or the victim are under 18 years old and you either:
  - ordinarily live, or lived, with each other, or
  - regularly live or stay, or lived or stayed, with each other
- both you and the victim are under 18 years old and you either:
  - ordinarily live, or lived, with each other, or
  - regularly live or stay, or lived or stayed, with each other, or
- the victim is under 18 years old and you are their guardian, or
- the victim is 18 or over and you are their guardian, and you were also their guardian when they were under 18 years old.

**'Intimate personal relationship'** means you:

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

## What are the consequences of committing a family violence offence?

Any family violence offence is treated seriously by the courts and may result in a serious penalty, such as immediate imprisonment.

A finding of guilt for most family violence offences will also result in you being disqualified from holding or obtaining a firearms licence for a period of time.

There are also other serious consequences, which are different depending on whether the offence is a 'category A family violence offence' or a 'category B family violence offence'.

### What are the consequences of committing a category A family violence offence?

The consequences of committing a 'category A family violence offence' include:

- If you commit a 'category A family violence offence' when you are subject to a Family Violence Restraining Order (FVRO) that protects the victim of the offence, if you are released on bail the court must impose an electronic monitoring condition on you, unless there are exceptional circumstances.
- If you commit a 'category A family violence offence' when you are subject to an FVRO that protects the victim of the offence and you are then convicted of that offence, if the court gives you any type of community supervision order it must impose electronic monitoring as a requirement of the order unless there are exceptional circumstances.
- If you are serving imprisonment for a 'category A family violence offence' and you are subject to an FVRO at the time you are to be released on a parole order, re-entry release order or post-sentence supervision order, the Prisoners Review Board must impose electronic monitoring as a requirement of the order unless there are exceptional circumstances.

## What are the consequences of committing a category B family violence offence?

The consequences of committing a 'category B family violence offence', include:

- if you have previously committed family violence offences, you may be declared a Serial Family Violence Offender (see full information below).
- If you commit a 'category B family violence offence' when 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 must impose electronic monitoring as a condition of your bail, unless there are exceptional circumstances.
- If you are convicted of a 'category B family violence offence' and you had previously been declared a Serial Family Violence Offender or you are declared a Serial Family Violence Offender in the same proceedings when you are convicted of the offence, if the court sentences you to any type of community supervision order it must impose electronic monitoring as a requirement of the order, unless there are exceptional circumstances.
- If you are convicted of a 'category B family violence offence' and you are a Serial Family Violence Offender, if the court gives you suspended or immediate imprisonment, it must declare the offence to be a serious offence; this means if you serve time in prison for the offence, you can be put on a post-sentence supervision order when you are released.
- If you are serving imprisonment for a 'category B family violence offence' and you are a Serial Family Violence Offender, if you are released on a parole order, re-entry release order or post-sentence supervision order, the Prisoners Review Board must impose electronic monitoring as a requirement of the order, unless there are exceptional circumstances.

# How is a Serial Family Violence Offender declaration made?

A court can declare you to be a Serial Family Violence Offender (SFVO) under section 124E *Sentencing Act 1995* (WA).

Section 124E says that the court can make a Serial Family Violence Offender declaration if it convicts you of a 'category B family violence offence' and counting this conviction, in total you then have:

- at least 3 convictions for a 'prescribed offence',

  OR
- at least 2 convictions for a 'prescribed offence' that is 'indictable only'.

**'Prescribed offence'** means:

- an offence or attempted offence that is a 'category B family violence offence', or
- an offence or attempted offence committed in another State or Territory, or overseas, or against a law of the Commonwealth, that would be a 'category B family violence offence' if it was committed in Western Australia.

**'Indictable only'** offence means an offence that must be dealt with on indictment, in the District or Supreme Court.

A conviction does not include any offence for which you were given a spent conviction order.

When counting the total number of offences you have committed, to decide if s124E applies to you, **the court must follow these counting rules**:

- 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.

## Does the court have to make an SFVO declaration?

No, even if the court counts your offences and decides that s124E applies to you, it does not have to declare you to be a Serial Family Violence Offender. **The court still has a choice about whether to make the declaration.**

When making this choice, the court can take anything into account that it considers is relevant, but it **must at least consider**:

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

The court can obtain an **expert report** to help it to decide how likely it is that you will commit another 'category B family violence offence'.

## How can I respond to a court considering an SFVO declaration?

If the court is considering making an SFVO declaration against you, the prosecution will provide the court with your criminal record and summaries of the facts of the offences that are to be counted.

You should:

- check your **criminal record** carefully to be sure it includes the correct offences.
- check the **summaries of facts** for the offences to be sure they are the same as the facts that were relied on by the court when it sentenced you. If they are not the same, you should ask for the court transcript from when you were sentenced. If the court agrees, it will put off its decision on the declaration until it has read the transcript.
- check any **expert report** that is used by the court to decide how likely it is that you will commit another 'category B family violence offence'. Tell the court if the report contains any information that is incorrect, or that you say is not relevant and should not be taken into account.

If you have a **firearms or explosives licence**, you will not be allowed to keep it when an SFVO declaration is made against you, unless the court making the declaration gives you an exemption. The court can give you an exemption if it is satisfied there are exceptional reasons for letting you keep the licence. If you want an exemption, it is up to you to show that there are exceptional reasons and you must show this at the time the court makes the SFVO declaration.

## How long does an SFVO declaration last?

An SFVO declaration remains in place unless it is cancelled by a court. You may apply to have it cancelled **after 10 years** from the date the declaration is made. The application may be brought in a court that is at the same level or higher than the one that made the declaration.

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 'category B family violence offences' since the declaration was made and how likely it is that you will commit further offences of this type.

## Consequences of an SFVO declaration

There are consequences from being declared a Serial Family Violence Offender which apply while the declaration is in place. They include:

- If you commit a 'category B family violence offence' and you are released to bail, you must be made subject to electronic monitoring, unless there are exceptional circumstances.
- If you are convicted of a 'category B family violence offence', if the court sentences you to any type of community supervision order it must impose electronic monitoring as a requirement of the order, unless there are exceptional circumstances.
- If you are to be released on parole, a re-entry release order or a post-sentence supervision order after serving time in prison for a 'category B family violence offence', the

Prisoner Review Board must impose electronic monitoring on you, unless there are exceptional circumstances.

- You are not allowed to hold or obtain a firearms or explosives licence, unless the court that made the SFVO declaration gave you an exemption.

## What are exceptional circumstances?

As noted in the information above, in many situations the court must impose certain things on you unless there are 'exceptional circumstances'. For example, there are situations noted above where the court must impose electronic monitoring on you, unless there are exceptional circumstances.

'Exceptional circumstances' are sometimes referred to as 'exceptional reasons'.

'Exceptional circumstances' means there is something unusual, out of the ordinary, or in some way special about your situation, or your situation is an exception to the usual circumstances that exist.

It is generally very difficult to show that there are exceptional circumstances. If you think there might be exceptional circumstances in your case, try to get legal advice and be represented by a lawyer when you appear in court.

## What is electronic monitoring?

As noted in the information above, a court might make you subject to electronic monitoring while you are on bail, or while you are being supervised in the community as part of your sentence. Also, the Prisoner Review Board might make you subject to electronic monitoring when you are released from prison.

Electronic monitoring means being fitted with a GPS tracking device. If you are fitted with a device, police and community corrections officers can see where you are at all times and see if you are going near people that the court or the Prisoner Review Board say must be protected from you.

If you are under electronic monitoring, community corrections can **direct you to**:

- wear an electronic monitoring device (this is worn on your ankle),
- allow electronic monitoring equipment to be installed in the place where you are staying,
- keep the device charged at all times, and
- not enter any area described in a written notice given to you.

If you don't follow these directions, you can be charged with a serious **offence**.

### Raise exceptional circumstances if possible

If electronic monitoring will have some special impact on you that is different from the impact on other people, there may be exceptional reasons why it should not be imposed on you.

If you think this is the case, raise these reasons with your lawyer, or directly with the court or Prisoner Review Board if you don't have a lawyer, before electronic monitoring is imposed on you.

## Where can I get legal help?

You can pay a lawyer privately to advise and represent you in any court.

Alternatively, a Legal Aid WA duty lawyer can advise and represent you if you are appearing in the Magistrates Court for a family violence offence, including giving you advice about the consequences of committing a family violence offence. However, a duty lawyer cannot help you if you have pleaded not guilty and are appearing at a trial.

If your offence must be dealt with in the District or Supreme Court, you may be eligible for a grant of legal aid to have a dedicated lawyer to look after your case. A duty lawyer can help you apply for a grant of aid.

If you are an Aboriginal or Torres Strait Islander, the Aboriginal Legal Service or Legal Aid WA are available to help you.

## LEGAL AID WA CONTACTS

**Infoline:** 1300 650 579

**Legal Yarn:** 1800 319 803 (for First Nations callers)

**Website/InfoChat:** www.legalaid.wa.gov.au

**Interpreting and relay services to help you contact us:**

**Translating & Interpreting Service:** 131 450

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