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ENGROSSED HOUSE BILL 2236

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State of Washington

53rd Legislature

1994 Regular Session

By Representatives R. Johnson, Long, Quall, J. Kohl, Wineberry, Pruitt, Kremen and Johanson

Read first time 01/11/94. Referred to Committee on Judiciary.

1 AN ACT Relating to stalking; amending RCW 9A.46.110 and 13.40.020;  
2 and reenacting and amending RCW 9A.46.060.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 9A.46.110 and 1992 c 186 s 1 are each amended to read  
5 as follows:

6 (1) A person commits the crime of stalking if, without lawful  
7 authority and under circumstances not amounting to a felony attempt of  
8 another crime:

9 (a) He or she intentionally and repeatedly harasses or repeatedly  
10 follows another person (~~(to that person's home, school, place of~~  
11 ~~employment, business, or any other location, or follows the person~~  
12 ~~while the person is in transit between locations))~~); and

13 (b) The person being harassed or followed is intimidated, harassed,  
14 or placed in fear that the stalker intends to injure the person,  
15 another person, or property of the person (~~(being followed)~~) or of  
16 another person. The feeling of fear, intimidation, or harassment must  
17 be one that a reasonable person in the same situation would experience  
18 under all the circumstances; and

19 (c) The stalker either:

1 (i) Intends to frighten, intimidate, or harass the person ((being  
2 followed)); or

3 (ii) Knows or reasonably should know that the person ((being  
4 followed)) is afraid, intimidated, or harassed even if the stalker did  
5 not intend to place the person in fear or intimidate or harass the  
6 person.

7 (2)(a) It is not a defense to the crime of stalking under  
8 subsection (1)(c)(i) of this section that the stalker was not given  
9 actual notice that the person ((being followed)) did not want the  
10 stalker to contact or follow the person; and

11 (b) It is not a defense to the crime of stalking under subsection  
12 (1)(c)(ii) of this section that the stalker did not intend to frighten,  
13 intimidate, or harass the person ((being followed)).

14 (3) It shall be a defense to the crime of stalking that the  
15 defendant is a licensed private detective acting within the capacity of  
16 his or her license as provided by chapter 18.165 RCW.

17 (4) Attempts to contact or follow the person after being given  
18 actual notice that the person does not want to be contacted or followed  
19 constitutes prima facie evidence that the stalker intends to intimidate  
20 or harass the person.

21 (5) A person who stalks another person is guilty of a gross  
22 misdemeanor except that the person is guilty of a class C felony if any  
23 of the following applies: (a) The stalker has previously been  
24 convicted in this state or any other state of any crime of harassment,  
25 as defined in RCW 9A.46.060, of the same victim or members of the  
26 victim's family or household or any person specifically named in a  
27 ((no contact order or no harassment)) protective order; (b) the  
28 ((person)) stalking violates ((a court)) any protective order ((issued  
29 pursuant to RCW 9A.46.040)) protecting the person being stalked; ((or))  
30 (c) the stalker has previously been convicted of a gross misdemeanor or  
31 felony stalking offense under this section for stalking another person;  
32 (d) the stalker was armed with a deadly weapon, as defined in RCW  
33 9.94A.125, while stalking the person; or (e) the stalker's victim is or  
34 was a law enforcement officer, judge, juror, attorney, or community  
35 correction's officer, or is a current, former, or prospective witness  
36 in an adjudicative proceeding, and the stalker stalked the victim to  
37 retaliate against the victim for an act the victim performed during the  
38 course of official duties or to influence the victim's performance of  
39 official duties.

1       (6) As used in this section:

2       (a) "Follows" means deliberately maintaining visual or physical  
3 proximity to a specific person over a period of time. A finding that  
4 the alleged stalker repeatedly and deliberately appears at the person's  
5 home, school, place of employment, business, or any other location to  
6 maintain visual or physical proximity to the person is sufficient to  
7 find that the alleged stalker follows the person. It is not necessary  
8 to establish that the alleged stalker follows the person while in  
9 transit from one location to another. It is a defense that the  
10 presence of the alleged stalker was coincidental.

11       (b) "Harasses" means unlawful harassment as defined in RCW  
12 10.14.020.

13       (c) "Protective order" means any temporary or permanent court order  
14 prohibiting or limiting violence against, harassment of, contact or  
15 communication with, or physical proximity to another person.

16       (d) "Repeatedly" means on two or more separate occasions.

17       **Sec. 2.** RCW 9A.46.060 and 1992 c 186 s 4 and 1992 c 145 s 12 are  
18 each reenacted and amended to read as follows:

19       As used in this chapter, "harassment" may include but is not  
20 limited to any of the following crimes:

21       (1) Harassment (RCW 9A.46.020);

22       (2) Malicious harassment (RCW 9A.36.080);

23       (3) Telephone harassment (RCW 9.61.230);

24       (4) Assault in the first degree (RCW 9A.36.011);

25       (5) Assault of a child in the first degree (RCW 9A.36.120);

26       (6) Assault in the second degree (RCW 9A.36.021);

27       (7) Assault of a child in the second degree (RCW 9A.36.130);

28       (8) Assault in the fourth degree (RCW 9A.36.041);

29       (9) Reckless endangerment in the second degree (RCW 9A.36.050);

30       (10) Extortion in the first degree (RCW 9A.56.120);

31       (11) Extortion in the second degree (RCW 9A.56.130);

32       (12) Coercion (RCW 9A.36.070);

33       (13) Burglary in the first degree (RCW 9A.52.020);

34       (14) Burglary in the second degree (RCW 9A.52.030);

35       (15) Criminal trespass in the first degree (RCW 9A.52.070);

36       (16) Criminal trespass in the second degree (RCW 9A.52.080);

37       (17) Malicious mischief in the first degree (RCW 9A.48.070);

38       (18) Malicious mischief in the second degree (RCW 9A.48.080);

1 (19) Malicious mischief in the third degree (RCW 9A.48.090);  
2 (20) Kidnapping in the first degree (RCW 9A.40.020);  
3 (21) Kidnapping in the second degree (RCW 9A.40.030);  
4 (22) Unlawful imprisonment (RCW 9A.40.040);  
5 (23) Rape in the first degree (RCW 9A.44.040);  
6 (24) Rape in the second degree (RCW 9A.44.050);  
7 (25) Rape in the third degree (RCW 9A.44.060);  
8 (26) Indecent liberties (RCW 9A.44.100);  
9 (27) Rape of a child in the first degree (RCW 9A.44.073);  
10 (28) Rape of a child in the second degree (RCW 9A.44.076);  
11 (29) Rape of a child in the third degree (RCW 9A.44.079);  
12 (30) Child molestation in the first degree (RCW 9A.44.083);  
13 (31) Child molestation in the second degree (RCW 9A.44.086);  
14 (32) Child molestation in the third degree (RCW 9A.44.089); ((and))  
15 (33) Stalking (RCW 9A.46.110); and  
16 (34) Violation of a temporary or permanent protective order issued  
17 pursuant to chapter 9A.46, 10.14, 10.99, 26.09, or 26.50 RCW.

18 **Sec. 3.** RCW 13.40.020 and 1993 c 373 s 1 are each amended to read  
19 as follows:

20 For the purposes of this chapter:

21 (1) "Serious offender" means a person fifteen years of age or older  
22 who has committed an offense which if committed by an adult would be:

23 (a) A class A felony, or an attempt to commit a class A felony;

24 (b) Manslaughter in the first degree; or

25 (c) Assault in the second degree, extortion in the first degree,  
26 child molestation in the second degree, kidnapping in the second  
27 degree, robbery in the second degree, residential burglary, or burglary  
28 in the second degree, where such offenses include the infliction of  
29 bodily harm upon another or where during the commission of or immediate  
30 withdrawal from such an offense the perpetrator is armed with a deadly  
31 weapon or firearm as defined in RCW 9A.04.110;

32 (2) "Community service" means compulsory service, without  
33 compensation, performed for the benefit of the community by the  
34 offender as punishment for committing an offense. Community service  
35 may be performed through public or private organizations or through  
36 work crews;

37 (3) "Community supervision" means an order of disposition by the  
38 court of an adjudicated youth not committed to the department. A

1 community supervision order for a single offense may be for a period of  
2 up to two years for a sex offense as defined by RCW 9.94A.030 and up to  
3 one year for other offenses. Community supervision is an  
4 individualized program comprised of one or more of the following:

5 (a) Community-based sanctions;

6 (b) Community-based rehabilitation;

7 (c) Monitoring and reporting requirements;

8 (4) Community-based sanctions may include one or more of the  
9 following:

10 (a) A fine, not to exceed one hundred dollars;

11 (b) Community service not to exceed one hundred fifty hours of  
12 service;

13 (5) "Community-based rehabilitation" means one or more of the  
14 following: Attendance of information classes; counseling, outpatient  
15 substance abuse treatment programs, outpatient mental health programs,  
16 anger management classes, or other services; or attendance at school or  
17 other educational programs appropriate for the juvenile as determined  
18 by the school district. Placement in community-based rehabilitation  
19 programs is subject to available funds;

20 (6) "Monitoring and reporting requirements" means one or more of  
21 the following: Curfews; requirements to remain at home, school, work,  
22 or court-ordered treatment programs during specified hours;  
23 restrictions from leaving or entering specified geographical areas;  
24 requirements to report to the probation officer as directed and to  
25 remain under the probation officer's supervision; and other conditions  
26 or limitations as the court may require which may not include  
27 confinement;

28 (7) "Confinement" means physical custody by the department of  
29 social and health services in a facility operated by or pursuant to a  
30 contract with the state, or physical custody in a detention facility  
31 operated by or pursuant to a contract with any county. The county may  
32 operate or contract with vendors to operate county detention  
33 facilities. The department may operate or contract to operate  
34 detention facilities for juveniles committed to the department.  
35 Pretrial confinement or confinement of less than thirty-one days  
36 imposed as part of a disposition or modification order may be served  
37 consecutively or intermittently, in the discretion of the court and may  
38 be served in a detention group home, detention foster home, or with  
39 electronic monitoring. Detention group homes and detention foster

1 homes used for confinement shall not also be used for the placement of  
2 dependent children. Confinement in detention group homes and detention  
3 foster homes and electronic monitoring are subject to available funds;

4 (8) "Court", when used without further qualification, means the  
5 juvenile court judge(s) or commissioner(s);

6 (9) "Criminal history" includes all criminal complaints against the  
7 respondent for which, prior to the commission of a current offense:

8 (a) The allegations were found correct by a court. If a respondent  
9 is convicted of two or more charges arising out of the same course of  
10 conduct, only the highest charge from among these shall count as an  
11 offense for the purposes of this chapter; or

12 (b) The criminal complaint was diverted by a prosecutor pursuant to  
13 the provisions of this chapter on agreement of the respondent and after  
14 an advisement to the respondent that the criminal complaint would be  
15 considered as part of the respondent's criminal history;

16 (10) "Department" means the department of social and health  
17 services;

18 (11) "Detention facility" means a county facility for the physical  
19 confinement of a juvenile alleged to have committed an offense or an  
20 adjudicated offender subject to a disposition or modification order;

21 (12) "Diversion unit" means any probation counselor who enters into  
22 a diversion agreement with an alleged youthful offender, or any other  
23 person or entity except a law enforcement official or entity, with whom  
24 the juvenile court administrator has contracted to arrange and  
25 supervise such agreements pursuant to RCW 13.40.080, or any person or  
26 entity specially funded by the legislature to arrange and supervise  
27 diversion agreements in accordance with the requirements of this  
28 chapter;

29 (13) "Institution" means a juvenile facility established pursuant  
30 to chapters 72.05 and 72.16 through 72.20 RCW;

31 (14) "Juvenile," "youth," and "child" mean any individual who is  
32 under the chronological age of eighteen years and who has not been  
33 previously transferred to adult court;

34 (15) "Juvenile offender" means any juvenile who has been found by  
35 the juvenile court to have committed an offense, including a person  
36 eighteen years of age or older over whom jurisdiction has been extended  
37 under RCW 13.40.300;

1 (16) "Manifest injustice" means a disposition that would either  
2 impose an excessive penalty on the juvenile or would impose a serious,  
3 and clear danger to society in light of the purposes of this chapter;

4 (17) "Middle offender" means a person who has committed an offense  
5 and who is neither a minor or first offender nor a serious offender;

6 (18) "Minor or first offender" means a person sixteen years of age  
7 or younger whose current offense(s) and criminal history fall entirely  
8 within one of the following categories:

9 (a) Four misdemeanors;

10 (b) Two misdemeanors and one gross misdemeanor;

11 (c) One misdemeanor and two gross misdemeanors;

12 (d) Three gross misdemeanors;

13 (e) One class C felony except: (i)(A) Manslaughter in the second  
14 degree; or (B) felony stalking; and (ii) one misdemeanor or gross  
15 misdemeanor;

16 (f) One class B felony except: Any felony which constitutes an  
17 attempt to commit a class A felony; manslaughter in the first degree;  
18 assault in the second degree; extortion in the first degree; indecent  
19 liberties; kidnapping in the second degree; robbery in the second  
20 degree; burglary in the second degree; residential burglary; vehicular  
21 homicide; or arson in the second degree.

22 For purposes of this definition, current violations shall be  
23 counted as misdemeanors;

24 (19) "Offense" means an act designated a violation or a crime if  
25 committed by an adult under the law of this state, under any ordinance  
26 of any city or county of this state, under any federal law, or under  
27 the law of another state if the act occurred in that state;

28 (20) "Respondent" means a juvenile who is alleged or proven to have  
29 committed an offense;

30 (21) "Restitution" means financial reimbursement by the offender to  
31 the victim, and shall be limited to easily ascertainable damages for  
32 injury to or loss of property, actual expenses incurred for medical  
33 treatment for physical injury to persons, lost wages resulting from  
34 physical injury, and costs of the victim's counseling reasonably  
35 related to the offense if the offense is a sex offense. Restitution  
36 shall not include reimbursement for damages for mental anguish, pain  
37 and suffering, or other intangible losses. Nothing in this chapter  
38 shall limit or replace civil remedies or defenses available to the  
39 victim or offender;

1 (22) "Secretary" means the secretary of the department of social  
2 and health services;

3 (23) "Services" mean services which provide alternatives to  
4 incarceration for those juveniles who have pleaded or been adjudicated  
5 guilty of an offense or have signed a diversion agreement pursuant to  
6 this chapter;

7 (24) "Sex offense" means an offense defined as a sex offense in RCW  
8 9.94A.030;

9 (25) "Sexual motivation" means that one of the purposes for which  
10 the respondent committed the offense was for the purpose of his or her  
11 sexual gratification;

12 (26) "Foster care" means temporary physical care in a foster family  
13 home or group care facility as defined in RCW 74.15.020 and licensed by  
14 the department, or other legally authorized care;

15 (27) "Violation" means an act or omission, which if committed by an  
16 adult, must be proven beyond a reasonable doubt, and is punishable by  
17 sanctions which do not include incarceration.

18 NEW SECTION. **Sec. 4.** If any provision of this act or its  
19 application to any person or circumstance is held invalid, the  
20 remainder of the act or the application of the provision to other  
21 persons or circumstances is not affected.

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