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HOUSE BILL 2791

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State of Washington                      58th Legislature                      2004 Regular Session

By Representatives Kagi, Jarrett, Cody, Tom, Hunter, Darneille, Clibborn, Moeller, Schual-Berke, Chase and Hudgins

Read first time 01/20/2004. Referred to Committee on Judiciary.

1            AN ACT Relating to firearms and domestic violence; and amending RCW  
2 9.41.800, 10.99.040, 10.99.045, 26.50.060, and 26.50.070.

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

4            **Sec. 1.** RCW 9.41.800 and 2002 c 302 s 704 are each amended to read  
5 as follows:

6            (1) Any court when entering an order authorized under RCW  
7 9A.46.080, 10.14.080, (~~(10.99.040, 10.99.045,)~~) 26.09.050, 26.09.060,  
8 26.10.040, 26.10.115, 26.26.130, 26.50.060, (~~(26.50.070,)~~) or 26.26.590  
9 shall, upon a showing by clear and convincing evidence, that a party  
10 has: Used, displayed, or threatened to use a firearm or other  
11 dangerous weapon in a felony, or previously committed any offense that  
12 makes him or her ineligible to possess a firearm under the provisions  
13 of RCW 9.41.040:

14            (a) Require the party to surrender any firearm or other dangerous  
15 weapon;

16            (b) Require the party to surrender any concealed pistol license  
17 issued under RCW 9.41.070;

18            (c) Prohibit the party from obtaining or possessing a firearm or  
19 other dangerous weapon;

1 (d) Prohibit the party from obtaining or possessing a concealed  
2 pistol license.

3 (2) Any court when entering an order authorized under RCW  
4 9A.46.080, 10.14.080, (~~10.99.040, 10.99.045,~~) 26.09.050, 26.09.060,  
5 26.10.040, 26.10.115, 26.26.130, 26.50.060, (~~26.50.070,~~) or 26.26.590  
6 may, upon a showing by a preponderance of the evidence but not by clear  
7 and convincing evidence, that a party has: Used, displayed, or  
8 threatened to use a firearm or other dangerous weapon in a felony, or  
9 previously committed any offense that makes him or her ineligible to  
10 possess a pistol under the provisions of RCW 9.41.040:

11 (a) Require the party to surrender any firearm or other dangerous  
12 weapon;

13 (b) Require the party to surrender a concealed pistol license  
14 issued under RCW 9.41.070;

15 (c) Prohibit the party from obtaining or possessing a firearm or  
16 other dangerous weapon;

17 (d) Prohibit the party from obtaining or possessing a concealed  
18 pistol license.

19 (3) The court may order temporary surrender of a firearm or other  
20 dangerous weapon without notice to the other party if it finds, on the  
21 basis of the moving affidavit or other evidence, that irreparable  
22 injury could result if an order is not issued until the time for  
23 response has elapsed.

24 (4) In addition to the provisions of subsections (1), (2), and (3)  
25 of this section, the court may enter an order requiring a party to  
26 comply with the provisions in subsection (1) of this section if it  
27 finds that the possession of a firearm or other dangerous weapon by any  
28 party presents a serious and imminent threat to public health or  
29 safety, or to the health or safety of any individual.

30 (5) The requirements of subsections (1), (2), and (4) of this  
31 section may be for a period of time less than the duration of the  
32 order.

33 (6) When entering an order authorized under RCW 10.99.040,  
34 10.99.045, or 26.50.070, the court must:

35 (a) Require the party to surrender any firearm or other dangerous  
36 weapon;

37 (b) Require the party to surrender a concealed pistol license  
38 issued under RCW 9.41.070;

1 (c) Prohibit the party from obtaining or possessing a firearm or  
2 other dangerous weapon; and

3 (d) Prohibit the party from obtaining or possessing a concealed  
4 pistol license.

5 (7) When entering an order authorized under RCW 26.50.060, if a  
6 party has committed an act of domestic violence, unless that party  
7 shows by clear and convincing evidence they do not pose a threat to  
8 public health or safety, or to the health or safety of any individual,  
9 the court must:

10 (a) Require the party to surrender any firearm or other dangerous  
11 weapon;

12 (b) Require the party to surrender a concealed pistol license  
13 issued under RCW 9.41.070;

14 (c) Prohibit the party from obtaining or possessing a firearm or  
15 other dangerous weapon; and

16 (d) Prohibit the party from obtaining or possessing a concealed  
17 pistol license.

18 (8) The court may require the party to surrender any firearm or  
19 other dangerous weapon in his or her immediate possession or control or  
20 subject to his or her immediate possession or control to the sheriff of  
21 the county having jurisdiction of the proceeding, the chief of police  
22 of the municipality having jurisdiction, or to the restrained or  
23 enjoined party's counsel or to any person designated by the court.

24 (9) All law enforcement agencies must accept weapons surrendered  
25 under an order authorized by this section, RCW 10.99.040, 10.99.045,  
26 26.50.060, or 26.50.070, and must beginning January 1, 2005, have in  
27 place rules or policies regarding how to accept, seize, and store  
28 weapons subject to an order of surrender.

29 **Sec. 2.** RCW 10.99.040 and 2000 c 119 s 18 are each amended to read  
30 as follows:

31 (1) Because of the serious nature of domestic violence, the court  
32 in domestic violence actions:

33 (a) Shall not dismiss any charge or delay disposition because of  
34 concurrent dissolution or other civil proceedings;

35 (b) Shall not require proof that either party is seeking a  
36 dissolution of marriage prior to instigation of criminal proceedings;

1 (c) Shall waive any requirement that the victim's location be  
2 disclosed to any person, other than the attorney of a criminal  
3 defendant, upon a showing that there is a possibility of further  
4 violence: PROVIDED, That the court may order a criminal defense  
5 attorney not to disclose to his or her client the victim's location;  
6 and

7 (d) Shall identify by any reasonable means on docket sheets those  
8 criminal actions arising from acts of domestic violence.

9 (2)(a) Because of the likelihood of repeated violence directed at  
10 those who have been victims of domestic violence in the past, when any  
11 person charged with or arrested for a crime involving domestic violence  
12 is released from custody before arraignment or trial on bail or  
13 personal recognizance, the court authorizing the release shall  
14 determine whether that person should be prohibited from having any  
15 contact with the victim, may prohibit that person from having any  
16 contact with the victim, and must:

17 (i) Require the party to surrender any firearm or other dangerous  
18 weapon;

19 (ii) Require the party to surrender a concealed pistol license  
20 issued under RCW 9.41.070;

21 (iii) Prohibit the party from obtaining or possessing a firearm or  
22 other dangerous weapon; and

23 (iv) Prohibit the party from obtaining or possessing a concealed  
24 pistol license. ((~~The jurisdiction authorizing the release shall~~  
25 ~~determine whether that person should be prohibited from having any~~  
26 ~~contact with the victim.~~))

27 (b) If there is no outstanding restraining or protective order  
28 prohibiting that person from having contact with the victim, the court  
29 authorizing release may issue, by telephone, a no-contact order  
30 prohibiting the person charged or arrested from having contact with the  
31 victim or from knowingly coming within, or knowingly remaining within,  
32 a specified distance of a location and must:

33 (i) Require the party to surrender any firearm or other dangerous  
34 weapon;

35 (ii) Require the party to surrender a concealed pistol license  
36 issued under RCW 9.41.070;

37 (iii) Prohibit the party from obtaining or possessing a firearm or  
38 other dangerous weapon; and

1 (iv) Prohibit the party from obtaining or possessing a concealed  
2 pistol license.

3 ~~((b) In issuing the order, the court shall consider the provisions~~  
4 ~~of RCW 9.41.800.))~~

5 (c) The no-contact order and order regarding firearms or other  
6 dangerous weapons shall also be issued in writing as soon as possible.

7 (3)(a) At the time of arraignment the court shall determine whether  
8 a no-contact order shall be issued or extended. The no-contact order  
9 shall terminate if the defendant is acquitted or the charges are  
10 dismissed. If a no-contact order is issued or extended, the court may  
11 also include in the conditions of release a requirement that the  
12 defendant submit to electronic monitoring. If electronic monitoring is  
13 ordered, the court shall specify who shall provide the monitoring  
14 services, and the terms under which the monitoring shall be performed.  
15 Upon conviction, the court may require as a condition of the sentence  
16 that the defendant reimburse the providing agency for the costs of the  
17 electronic monitoring.

18 (b) An order regarding firearms or other dangerous weapons remains  
19 in effect until the defendant is acquitted or the charges are  
20 dismissed.

21 (4)(a) Willful violation of a ~~((court))~~ no-contact order issued  
22 under subsection (2) or (3) of this section is punishable under RCW  
23 26.50.110.

24 (b) A violation of an order regarding firearms or other dangerous  
25 weapons is punishable under chapter 9.41 RCW.

26 (c) The written order releasing the person charged or arrested  
27 shall contain the court's directives and shall bear the legend:  
28 "Violation of this order is a criminal offense under chapter 26.50 RCW  
29 and will subject a violator to arrest; any assault, drive-by shooting,  
30 or reckless endangerment that is a violation of this order is a felony.  
31 You can be arrested even if any person protected by the order invites  
32 or allows you to violate the order's prohibitions. You have the sole  
33 responsibility to avoid or refrain from violating the order's  
34 provisions. Only the court can change the order."

35 ~~((e))~~ (d) A certified copy of the order shall be provided to the  
36 victim.

37 (5) If a no-contact order has been issued prior to charging, that  
38 order shall expire at arraignment or within seventy-two hours if

1 charges are not filed. Such orders need not be entered into the  
2 computer-based criminal intelligence information system in this state  
3 which is used by law enforcement agencies to list outstanding warrants.

4 (6) Whenever (~~(a no contact)~~) an order is issued, modified, or  
5 terminated under subsection (2) or (3) of this section, the clerk of  
6 the court shall forward a copy of the order on or before the next  
7 judicial day to the appropriate law enforcement agency specified in the  
8 order. Upon receipt of the copy of the order the law enforcement  
9 agency shall enter the order for one year or until the expiration date  
10 specified on the order into any computer-based criminal intelligence  
11 information system available in this state used by law enforcement  
12 agencies to list outstanding warrants. Entry into the computer-based  
13 criminal intelligence information system constitutes notice to all law  
14 enforcement agencies of the existence of the order. The order is fully  
15 enforceable in any jurisdiction in the state. Upon receipt of notice  
16 that an order has been terminated under subsection (3) of this section,  
17 the law enforcement agency shall remove the order from the computer-  
18 based criminal intelligence information system.

19 **Sec. 3.** RCW 10.99.045 and 2000 c 119 s 19 are each amended to read  
20 as follows:

21 (1) A defendant arrested for an offense involving domestic violence  
22 as defined by RCW 10.99.020 shall be required to appear in person  
23 before a magistrate within one judicial day after the arrest.

24 (2) A defendant who is charged by citation, complaint, or  
25 information with an offense involving domestic violence as defined by  
26 RCW 10.99.020 and not arrested shall appear in court for arraignment in  
27 person as soon as practicable, but in no event later than fourteen days  
28 after the next day on which court is in session following the issuance  
29 of the citation or the filing of the complaint or information.

30 (3) At the time of the appearances provided in subsection (1) or  
31 (2) of this section, the court shall determine the necessity of  
32 imposing a no-contact order or other conditions of pretrial release  
33 according to the procedures established by court rule for a preliminary  
34 appearance or an arraignment. The court (~~(may)~~) must include in the  
35 order any conditions (~~(authorized)~~) required under RCW 9.41.800 and  
36 10.99.040.

1 (4) Appearances required pursuant to this section are mandatory and  
2 cannot be waived.

3 (5) The no-contact order shall be issued and entered with the  
4 appropriate law enforcement agency pursuant to the procedures outlined  
5 in RCW 10.99.040 (2) and (~~(4)~~) (6).

6 **Sec. 4.** RCW 26.50.060 and 2000 c 119 s 15 are each amended to read  
7 as follows:

8 (1) Upon notice and after hearing, the court may provide relief as  
9 follows:

10 (a) Restrain the respondent from committing acts of domestic  
11 violence and, if the court finds the respondent has committed acts of  
12 domestic violence, the court must (i) require the respondent to  
13 surrender any firearm or other dangerous weapon, (ii) require the  
14 respondent to surrender a concealed pistol license issued under RCW  
15 9.41.070, (iii) prohibit the respondent from obtaining or possessing a  
16 firearm or other dangerous weapon, and (iv) prohibit the respondent  
17 from obtaining or possessing a concealed pistol license;

18 (b) Exclude the respondent from the dwelling that the parties  
19 share, from the residence, workplace, or school of the petitioner, or  
20 from the day care or school of a child;

21 (c) Prohibit the respondent from knowingly coming within, or  
22 knowingly remaining within, a specified distance from a specified  
23 location;

24 (d) On the same basis as is provided in chapter 26.09 RCW, the  
25 court shall make residential provision with regard to minor children of  
26 the parties. However, parenting plans as specified in chapter 26.09  
27 RCW shall not be required under this chapter;

28 (e) Order the respondent to participate in a domestic violence  
29 perpetrator treatment program approved under RCW 26.50.150;

30 (f) Order other relief as it deems necessary for the protection of  
31 the petitioner and other family or household members sought to be  
32 protected, including orders or directives to a peace officer, as  
33 allowed under this chapter;

34 (g) Require the respondent to pay the administrative court costs  
35 and service fees, as established by the county or municipality  
36 incurring the expense and to reimburse the petitioner for costs  
37 incurred in bringing the action, including reasonable attorneys' fees;

1 (h) Restrain the respondent from having any contact with the victim  
2 of domestic violence or the victim's children or members of the  
3 victim's household;

4 (i) Require the respondent to submit to electronic monitoring. The  
5 order shall specify who shall provide the electronic monitoring  
6 services and the terms under which the monitoring must be performed.  
7 The order also may include a requirement that the respondent pay the  
8 costs of the monitoring. The court shall consider the ability of the  
9 respondent to pay for electronic monitoring;

10 (j) Consider the provisions of RCW 9.41.800;

11 (k) Order possession and use of essential personal effects. The  
12 court shall list the essential personal effects with sufficient  
13 specificity to make it clear which property is included; and

14 (l) Order use of a vehicle.

15 (2) If a protection order restrains the respondent from contacting  
16 the respondent's minor children the restraint shall be for a fixed  
17 period not to exceed one year. This limitation is not applicable to  
18 orders for protection issued under chapter 26.09, 26.10, or 26.26 RCW.  
19 With regard to other relief, if the petitioner has petitioned for  
20 relief on his or her own behalf or on behalf of the petitioner's family  
21 or household members or minor children, and the court finds that the  
22 respondent is likely to resume acts of domestic violence against the  
23 petitioner or the petitioner's family or household members or minor  
24 children when the order expires, the court may either grant relief for  
25 a fixed period or enter a permanent order of protection.

26 If the petitioner has petitioned for relief on behalf of the  
27 respondent's minor children, the court shall advise the petitioner that  
28 if the petitioner wants to continue protection for a period beyond one  
29 year the petitioner may either petition for renewal pursuant to the  
30 provisions of this chapter or may seek relief pursuant to the  
31 provisions of chapter 26.09 or 26.26 RCW.

32 (3) If the court grants an order for a fixed time period, the  
33 petitioner may apply for renewal of the order by filing a petition for  
34 renewal at any time within the three months before the order expires.  
35 The petition for renewal shall state the reasons why the petitioner  
36 seeks to renew the protection order. Upon receipt of the petition for  
37 renewal the court shall order a hearing which shall be not later than  
38 fourteen days from the date of the order. Except as provided in RCW

1 26.50.085, personal service shall be made on the respondent not less  
2 than five days before the hearing. If timely service cannot be made  
3 the court shall set a new hearing date and shall either require  
4 additional attempts at obtaining personal service or permit service by  
5 publication as provided in RCW 26.50.085 or by mail as provided in RCW  
6 26.50.123. If the court permits service by publication or mail, the  
7 court shall set the new hearing date not later than twenty-four days  
8 from the date of the order. If the order expires because timely  
9 service cannot be made the court shall grant an ex parte order of  
10 protection as provided in RCW 26.50.070. The court shall grant the  
11 petition for renewal unless the respondent proves by a preponderance of  
12 the evidence that the respondent will not resume acts of domestic  
13 violence against the petitioner or the petitioner's children or family  
14 or household members when the order expires. The court may renew the  
15 protection order for another fixed time period or may enter a permanent  
16 order as provided in this section. The court may award court costs,  
17 service fees, and reasonable attorneys' fees as provided in subsection  
18 (1)((+f+)) (g) of this section.

19 (4) In providing relief under this chapter, the court may realign  
20 the designation of the parties as "petitioner" and "respondent" where  
21 the court finds that the original petitioner is the abuser and the  
22 original respondent is the victim of domestic violence and may issue an  
23 ex parte temporary order for protection in accordance with RCW  
24 26.50.070 on behalf of the victim until the victim is able to prepare  
25 a petition for an order for protection in accordance with RCW  
26 26.50.030.

27 (5) Except as provided in subsection (4) of this section, no order  
28 for protection shall grant relief to any party except upon notice to  
29 the respondent and hearing pursuant to a petition or counter-petition  
30 filed and served by the party seeking relief in accordance with RCW  
31 26.50.050.

32 (6) The court order shall specify the date the order expires if  
33 any. The court order shall also state whether the court issued the  
34 protection order following personal service, service by publication, or  
35 service by mail and whether the court has approved service by  
36 publication or mail of an order issued under this section.

37 (7) If the court declines to issue an order for protection or

1 declines to renew an order for protection, the court shall state in  
2 writing on the order the particular reasons for the court's denial.

3 **Sec. 5.** RCW 26.50.070 and 2000 c 119 s 16 are each amended to read  
4 as follows:

5 (1) Where an application under this section alleges that  
6 irreparable injury could result from domestic violence if an order is  
7 not issued immediately without prior notice to the respondent, the  
8 court may grant an ex parte temporary order for protection, pending a  
9 full hearing, and grant relief as the court deems proper, including an  
10 order:

11 (a) Restraining any party from committing acts of domestic  
12 violence;

13 (b) Restraining any party from going onto the grounds of or  
14 entering the dwelling that the parties share, from the residence,  
15 workplace, or school of the other, or from the day care or school of a  
16 child until further order of the court;

17 (c) Prohibiting any party from knowingly coming within, or  
18 knowingly remaining within, a specified distance from a specified  
19 location;

20 (d) Restraining any party from interfering with the other's custody  
21 of the minor children or from removing the children from the  
22 jurisdiction of the court;

23 (e) Restraining any party from having any contact with the victim  
24 of domestic violence or the victim's children or members of the  
25 victim's household; and

26 (f) Considering the provisions of RCW 9.41.800.

27 (2) If there is reasonable cause to believe a party has committed  
28 or will commit domestic violence, the court must (a) require the  
29 respondent to surrender any firearm or other dangerous weapon, (b)  
30 require the respondent to surrender a concealed pistol license issued  
31 under RCW 9.41.070, (c) prohibit the respondent from obtaining or  
32 possessing a firearm or other dangerous weapon, and (d) prohibit the  
33 respondent from obtaining or possessing a concealed pistol license. An  
34 order regarding firearms or other dangerous weapons remains in effect  
35 until the party shows by clear and convincing evidence they do not pose  
36 a threat to public health or safety, or to the health or safety of any  
37 individual.

1        (3) Irreparable injury under this section includes but is not  
2 limited to situations in which the respondent has recently threatened  
3 petitioner with bodily injury or has engaged in acts of domestic  
4 violence against the petitioner.

5        ~~((+3))~~ (4) The court shall hold an ex parte hearing in person or  
6 by telephone on the day the petition is filed or on the following  
7 judicial day.

8        ~~((+4))~~ (5) An ex parte temporary order for protection shall be  
9 effective for a fixed period not to exceed fourteen days or twenty-four  
10 days if the court has permitted service by publication under RCW  
11 26.50.085 or by mail under RCW 26.50.123. The ex parte order may be  
12 reissued. A full hearing, as provided in this chapter, shall be set  
13 for not later than fourteen days from the issuance of the temporary  
14 order or not later than twenty-four days if service by publication or  
15 by mail is permitted. Except as provided in RCW 26.50.050, 26.50.085,  
16 and 26.50.123, the respondent shall be personally served with a copy of  
17 the ex parte order along with a copy of the petition and notice of the  
18 date set for the hearing.

19        ~~((+5))~~ (6) Any order issued under this section shall contain the  
20 date and time of issuance and the expiration date and shall be entered  
21 into a statewide judicial information system by the clerk of the court  
22 within one judicial day after issuance.

23        ~~((+6))~~ (7) If the court declines to issue an ex parte temporary  
24 order for protection the court shall state the particular reasons for  
25 the court's denial. The court's denial of a motion for an ex parte  
26 order of protection shall be filed with the court.

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