

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5360

53rd Legislature
1993 Regular Session

Passed by the Senate April 20, 1993
YEAS 44 NAYS 0

President of the Senate

Passed by the House April 14, 1993
YEAS 98 NAYS 0

**Speaker of the
House of Representatives**

Approved

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5360** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Governor of the State of Washington

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5360

AS AMENDED BY THE HOUSE

Passed Legislature - 1993 Regular Session

State of Washington 53rd Legislature 1993 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators A. Smith, Roach, Spanel, M. Rasmussen, Winsley and von Reichbauer)

Read first time 02/11/93.

1 AN ACT Relating to domestic violence; amending RCW 26.50.035 and
2 10.99.030; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that domestic violence
5 is a problem of immense proportions affecting individuals as well as
6 communities. Domestic violence has long been recognized as being at
7 the core of other major social problems including child abuse, crimes
8 of violence against person or property, juvenile delinquency, and
9 alcohol and drug abuse. Domestic violence costs include the loss of
10 lives as well as millions of dollars each year in the state of
11 Washington for health care, absence from work, and services to
12 children. The crisis is growing.

13 While the existing protection order process can be a valuable tool
14 to increase safety for victims and to hold batterers accountable,
15 specific problems in its use have become evident. Victims have
16 difficulty completing the paperwork required; model forms have been
17 modified to be inconsistent with statutory language; different forms
18 create confusion for law enforcement agencies about the contents and
19 enforceability of orders. Refinements are needed so that victims have

1 the easy, quick, and effective access to the court system envisioned at
2 the time the protection order process was first created.

3 Valuable information about the reported incidents of domestic
4 violence in the state of Washington is unobtainable without gathering
5 data from all law enforcement agencies. Without this information, it
6 is difficult for policymakers, funders, and service providers to plan
7 for the resources and services needed to address the issue.

8 **Sec. 2.** RCW 26.50.035 and 1985 c 303 s 3 are each amended to read
9 as follows:

10 (1) By July 1, 1994, the administrator for the courts shall develop
11 and prepare(, in consultation with interested persons, the forms and
12 instructional)) instructions and informational brochures required under
13 RCW 26.50.030((+3-)) (4), standard petition and order for protection
14 forms, and a court staff handbook on domestic violence and the
15 protection order process. The standard petition and order for
16 protection forms must be used after September 1, 1994, for all
17 petitions filed and orders issued under this chapter. The
18 instructions, brochures, forms, and handbook shall be prepared in
19 consultation with interested persons, including a representative of the
20 state domestic violence coalition, judges, and law enforcement
21 personnel.

22 (a) The instructions shall be designed to assist petitioners in
23 completing the petition, and shall include a sample of standard
24 petition and order for protection forms.

25 (b) The informational brochure shall describe the use of and the
26 process for obtaining a protection order, a no-contact order as
27 provided by RCW 10.99.040, a restraining order as provided by RCW
28 26.09.060, and an antiharassment protection order as provided by
29 chapter 10.14 RCW.

30 (c) The order for protection form shall include, in a conspicuous
31 location, notice of criminal penalties resulting from violation of the
32 order, and the following statement: "You can be arrested even if the
33 person or persons who obtained the order invite or allow you to violate
34 the order's prohibitions. The respondent has the sole responsibility
35 to avoid or refrain from violating the order's provisions. Only the
36 court can change the order upon written application."

37 (d) The court staff handbook shall allow for the addition of a
38 community resource list by the court clerk.

1 (2) All court clerks shall obtain a community resource list from a
2 domestic violence program, defined in RCW 70.123.020, serving the
3 county in which the court is located. The community resource list
4 shall include the names and telephone numbers of domestic violence
5 programs serving the community in which the court is located, including
6 law enforcement agencies, domestic violence agencies, sexual assault
7 agencies, legal assistance programs, interpreters, multicultural
8 programs, and batterers' treatment programs. The court shall make the
9 community resource list available as part of or in addition to the
10 informational brochures described in subsection (1) of this section.

11 (3) The administrator for the courts shall distribute a master copy
12 of the petition and order forms ((and instructional brochures to all
13 court clerks)), instructions, and informational brochures to all court
14 clerks and shall distribute a master copy of the petition and order
15 forms to all superior, district, and municipal courts.

16 (4) For purposes of this section, "court clerks" means court
17 administrators in courts of limited jurisdiction and elected court
18 clerks.

19 (5) The administrator for the courts shall arrange for translation
20 of the instructions and informational brochures required by this
21 section, which shall contain a sample of the standard petition and
22 order for protection forms, into Spanish, Vietnamese, Laotian,
23 Cambodian, and Chinese, and shall distribute a master copy of the
24 translated instructions and informational brochures to all court clerks
25 by January 1, 1995.

26 **Sec. 3.** RCW 10.99.030 and 1984 c 263 s 21 are each amended to read
27 as follows:

28 (1) All training relating to the handling of domestic violence
29 complaints by law enforcement officers shall stress enforcement of
30 criminal laws in domestic situations, availability of community
31 resources, and protection of the victim. Law enforcement agencies and
32 community organizations with expertise in the issue of domestic
33 violence shall cooperate in all aspects of such training.

34 (2) The primary duty of peace officers, when responding to a
35 domestic violence situation, is to enforce the laws allegedly violated
36 and to protect the complaining party.

37 (3)(a) When a peace officer responds to a domestic violence call
38 and has probable cause to believe that a crime has been committed, the

1 peace officer shall exercise arrest powers with reference to the
2 criteria in RCW 10.31.100. The officer shall notify the victim of the
3 victim's right to initiate a criminal proceeding in all cases where the
4 officer has not exercised arrest powers or decided to initiate criminal
5 proceedings by citation or otherwise. The parties in such cases shall
6 also be advised of the importance of preserving evidence.

7 (b) A peace officer responding to a domestic violence call shall
8 take a complete offense report including the officer's disposition of
9 the case.

10 (4) When a peace officer responds to a domestic violence call, the
11 officer shall advise victims of all reasonable means to prevent further
12 abuse, including advising each person of the availability of a shelter
13 or other services in the community, and giving each person immediate
14 notice of the legal rights and remedies available. The notice shall
15 include handing each person a copy of the following statement:

16 "IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the
17 city or county prosecuting attorney to file a criminal
18 complaint. You also have the right to file a petition in
19 superior, district, or municipal court requesting an order for
20 protection from domestic abuse which could include any of the
21 following: (a) An order restraining your abuser from further
22 acts of abuse; (b) an order directing your abuser to leave your
23 household; (c) an order preventing your abuser from entering
24 your residence, school, business, or place of employment; (d)
25 an order awarding you or the other parent custody of or
26 visitation with your minor child or children; and (e) an order
27 restraining your abuser from molesting or interfering with
28 minor children in your custody. The forms you need to obtain
29 a protection order are available in any municipal, district, or
30 superior court.

31 Information about shelters and alternatives to domestic
32 violence is available from a state-wide twenty-four-hour toll-
33 free hotline at 1-800-562-6025. The battered women's shelter
34 and other resources in your area are (include local
35 information)"

36 (5) The peace officer may offer, arrange, or facilitate
37 transportation for the victim to a hospital for treatment of injuries
38 or to a place of safety or shelter.

1 (6) The law enforcement agency shall forward the offense report to
2 the appropriate prosecutor within ten days of making such report if
3 there is probable cause to believe that an offense has been committed,
4 unless the case is under active investigation.

5 (7) Each law enforcement agency shall make as soon as practicable
6 a written record and shall maintain records of all incidents of
7 domestic violence reported to it.

8 (8) Records kept pursuant to subsections (3) and (7) of this
9 section shall be made identifiable by means of a departmental code for
10 domestic violence.

11 (9) Commencing January 1, 1994, records of incidents of domestic
12 violence shall be submitted, in accordance with procedures described in
13 this subsection, to the Washington association of sheriffs and police
14 chiefs by all law enforcement agencies. The Washington criminal
15 justice training commission shall amend its contract for collection of
16 state-wide crime data with the Washington association of sheriffs and
17 police chiefs:

18 (a) To include a table, in the annual report of crime in Washington
19 produced by the Washington association of sheriffs and police chiefs
20 pursuant to the contract, showing the total number of actual offenses
21 and the number and percent of the offenses that are domestic violence
22 incidents for the following crimes: (i) Criminal homicide, with
23 subtotals for murder and nonnegligent homicide and manslaughter by
24 negligence; (ii) forcible rape, with subtotals for rape by force and
25 attempted forcible rape; (iii) robbery, with subtotals for firearm,
26 knife or cutting instrument, or other dangerous weapon, and strongarm
27 robbery; (iv) assault, with subtotals for firearm, knife or cutting
28 instrument, other dangerous weapon, hands, feet, aggravated, and other
29 nonaggravated assaults; (v) burglary, with subtotals for forcible
30 entry, nonforcible unlawful entry, and attempted forcible entry; (vi)
31 larceny theft, except motor vehicle theft; (vii) motor vehicle theft,
32 with subtotals for autos, trucks and buses, and other vehicles; and
33 (viii) arson;

34 (b) To require that the table shall continue to be prepared and
35 contained in the annual report of crime in Washington until that time
36 as comparable or more detailed information about domestic violence
37 incidents is available through the Washington state incident based
38 reporting system and the information is prepared and contained in the
39 annual report of crime in Washington; and

1 (c) To require that, in consultation with interested persons, the
2 Washington association of sheriffs and police chiefs prepare and
3 disseminate procedures to all law enforcement agencies in the state as
4 to how the agencies shall code and report domestic violence incidents
5 to the Washington association of sheriffs and police chiefs.

6 NEW SECTION. Sec. 4. If specific funding for section 2 subsection
7 (5) of this act, referencing this act by bill, section and subsection
8 number, is not provided by June 30, 1993, in the omnibus appropriations
9 act, section 2 subsection (5) is null and void.

10 **Sec. 5.** RCW 7.69.020 and 1985 c 443 s 2 are each amended to read
11 as follows:

12 Unless the context clearly requires otherwise, the definitions in
13 this section apply throughout this chapter.

14 (1) "Crime" means an act punishable as a felony, gross misdemeanor,
15 or misdemeanor under the laws of this state or equivalent federal or
16 local law.

17 (2) "Survivor" or "survivors" of a victim of crime means a spouse,
18 child, parent, legal guardian, sibling, or grandparent. If there is
19 more than one survivor of a victim of crime, one survivor shall be
20 designated by the prosecutor to represent all survivors for purposes of
21 providing the notice to survivors required by this chapter.

22 (3) "Victim" means a person against whom a crime has been committed
23 or the representative of a person against whom a crime has been
24 committed.

25 (4) "Victim impact statement" means a statement submitted to the
26 court by the victim or a survivor, individually or with the assistance
27 of the prosecuting attorney if assistance is requested by the victim or
28 survivor, which may include but is not limited to information assessing
29 the financial, medical, social, and psychological impact of the offense
30 upon the victim or survivors.

31 (5) "Witness" means a person who has been or is expected to be
32 summoned to testify for the prosecution in a criminal action, or who by
33 reason of having relevant information is subject to call or likely to
34 be called as a witness for the prosecution, whether or not an action or
35 proceeding has been commenced.

36 (6) "Crime victim/witness program" means any crime victim and
37 witness program of a county or local law enforcement agency or

1 prosecutor's office, any rape crisis center's sexual assault victim
2 advocacy program as provided in chapter 70.125 RCW, any domestic
3 violence program's legal and community advocate program for domestic
4 violence victims as provided in chapter 70.123 RCW, or any other crime
5 victim advocacy program which provides trained advocates to assist
6 crime victims during the investigation and prosecution of the crime.

7 **Sec. 6.** RCW 7.69.030 and 1985 c 443 s 3 are each amended to read
8 as follows:

9 There shall be a reasonable effort made to ensure that victims,
10 survivors of victims, and witnesses of crimes have the following
11 rights:

12 (1) With respect to victims of violent or sex crimes, to receive,
13 at the time of reporting the crime to law enforcement officials, a
14 written statement of the rights of crime victims as provided in this
15 chapter. The written statement shall include the name, address, and
16 telephone number of a county or local crime victim/witness program, if
17 such a crime victim/witness program exists in the county;

18 (2) To be informed by local law enforcement agencies or the
19 prosecuting attorney of the final disposition of the case in which the
20 victim, survivor, or witness is involved;

21 ~~((+2))~~ (3) To be notified by the party who issued the subpoena
22 that a court proceeding to which they have been subpoenaed will not
23 occur as scheduled, in order to save the person an unnecessary trip to
24 court;

25 ~~((+3))~~ (4) To receive protection from harm and threats of harm
26 arising out of cooperation with law enforcement and prosecution
27 efforts, and to be provided with information as to the level of
28 protection available;

29 ~~((+4))~~ (5) To be informed of the procedure to be followed to apply
30 for and receive any witness fees to which they are entitled;

31 ~~((+5))~~ (6) To be provided, whenever practical, a secure waiting
32 area during court proceedings that does not require them to be in close
33 proximity to defendants and families or friends of defendants;

34 ~~((+6))~~ (7) To have any stolen or other personal property
35 expeditiously returned by law enforcement agencies or the superior
36 court when no longer needed as evidence. When feasible, all such
37 property, except weapons, currency, contraband, property subject to
38 evidentiary analysis, and property of which ownership is disputed,

1 shall be photographed and returned to the owner within ten days of
2 being taken;

3 ~~((+7+))~~ (8) To be provided with appropriate employer intercession
4 services to ensure that employers of victims, survivors of victims, and
5 witnesses of crime will cooperate with the criminal justice process in
6 order to minimize an employee's loss of pay and other benefits
7 resulting from court appearance;

8 ~~((+8+))~~ (9) To access to immediate medical assistance and not to be
9 detained for an unreasonable length of time by a law enforcement agency
10 before having such assistance administered. However, an employee of
11 the law enforcement agency may, if necessary, accompany the person to
12 a medical facility to question the person about the criminal incident
13 if the questioning does not hinder the administration of medical
14 assistance;

15 ~~((+9+))~~ (10) With respect to victims of violent and sex crimes, to
16 have a crime victim advocate from a crime victim/witness program
17 present at any prosecutorial or defense interviews with the victim.
18 This subsection applies if practical and if the presence of the crime
19 victim advocate does not cause any unnecessary delay in the
20 investigation or prosecution of the case. The role of the crime victim
21 advocate is to provide emotional support to the crime victim;

22 (11) With respect to victims and survivors of victims, to be
23 physically present in court during trial, or if subpoenaed to testify,
24 to be scheduled as early as practical in the proceedings in order to be
25 physically present during trial after testifying and not to be excluded
26 solely because they have testified;

27 ~~((+10+))~~ (12) With respect to victims and survivors of victims, to
28 be informed by the prosecuting attorney of the date, time, and place of
29 the trial and of the sentencing hearing for felony convictions upon
30 request by a victim or survivor;

31 ~~((+11+))~~ (13) To submit a victim impact statement or report to the
32 court, with the assistance of the prosecuting attorney if requested,
33 which shall be included in all presentence reports and permanently
34 included in the files and records accompanying the offender committed
35 to the custody of a state agency or institution;

36 ~~((+12+))~~ (14) With respect to victims and survivors of victims, to
37 present a statement personally or by representation, at the sentencing
38 hearing for felony convictions; and

1 (~~(13)~~) (15) With respect to victims and survivors of victims, to
2 entry of an order of restitution by the court in all felony cases, even
3 when the offender is sentenced to confinement, unless extraordinary
4 circumstances exist which make restitution inappropriate in the court's
5 judgment.

6 **Sec. 7.** RCW 7.69A.020 and 1992 c 188 s 2 are each amended to read
7 as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this chapter.

10 (1) "Crime" means an act punishable as a felony, gross misdemeanor,
11 or misdemeanor under the laws of this state or equivalent federal or
12 local law.

13 (2) "Child" means any living child under the age of eighteen years.

14 (3) "Victim" means a living person against whom a crime has been
15 committed.

16 (4) "Witness" means a person who has been or is expected to be
17 summoned to testify for the prosecution in a criminal action, or who by
18 reason of having relevant information is subject to call or likely to
19 be called as a witness for the prosecution, whether or not an action or
20 proceeding has been commenced.

21 (5) "Family member" means child, parent, or legal guardian.

22 (6) "Advocate" means any person, including a family member not
23 accused of a crime, who provides support to a child victim or child
24 witness during any legal proceeding.

25 (7) "Court proceedings" means any court proceeding conducted during
26 the course of the prosecution of a crime committed against a child
27 victim, including pretrial hearings, trial, sentencing, or appellate
28 proceedings.

29 (8) "Identifying information" means the child's name, address,
30 location, and photograph, and in cases in which the child is a relative
31 or stepchild of the alleged perpetrator, identification of the
32 relationship between the child and the alleged perpetrator.

33 (9) "Crime victim/witness program" means any crime victim and
34 witness program of a county or local law enforcement agency or
35 prosecutor's office, any rape crisis center's sexual assault victim
36 advocacy program as provided in chapter 70.125 RCW, any domestic
37 violence program's legal and community advocate program for domestic
38 violence victims as provided in chapter 70.123 RCW, or any other crime

1 victim advocacy program which provides trained advocates to assist
2 crime victims during the investigation and prosecution of the crime.

3 **Sec. 8.** RCW 7.69A.030 and 1985 c 394 s 3 are each amended to read
4 as follows:

5 In addition to the rights of victims and witnesses provided for in
6 RCW 7.69.030, there shall be every reasonable effort made by law
7 enforcement agencies, prosecutors, and judges to assure that child
8 victims and witnesses are afforded the rights enumerated in this
9 section. The enumeration of rights shall not be construed to create
10 substantive rights and duties, and the application of an enumerated
11 right in an individual case is subject to the discretion of the law
12 enforcement agency, prosecutor, or judge. Child victims and witnesses
13 have the following rights:

14 (1) To have explained in language easily understood by the child,
15 all legal proceedings and/or police investigations in which the child
16 may be involved.

17 (2) With respect to child victims of sex or violent crimes or child
18 abuse, to have a crime victim advocate from a crime victim/witness
19 program present at any prosecutorial or defense interviews with the
20 child victim. This subsection applies if practical and if the presence
21 of the crime victim advocate does not cause any unnecessary delay in
22 the investigation or prosecution of the case. The role of the crime
23 victim advocate is to provide emotional support to the child victim and
24 to promote the child's feelings of security and safety.

25 (3) To be provided, whenever possible, a secure waiting area during
26 court proceedings and to have an advocate or support person remain with
27 the child prior to and during any court proceedings.

28 ~~((3))~~ (4) To not have the names, addresses, nor photographs of
29 the living child victim or witness disclosed by any law enforcement
30 agency, prosecutor's office, or state agency without the permission of
31 the child victim, child witness, parents, or legal guardians to anyone
32 except another law enforcement agency, prosecutor, defense counsel, or
33 private or governmental agency that provides services to the child
34 victim or witness.

35 ~~((4))~~ (5) To allow an advocate to make recommendations to the
36 prosecuting attorney about the ability of the child to cooperate with
37 prosecution and the potential effect of the proceedings on the child.

1 (~~(5)~~) (6) To allow an advocate to provide information to the
2 court concerning the child's ability to understand the nature of the
3 proceedings.

4 (~~(6)~~) (7) To be provided information or appropriate referrals to
5 social service agencies to assist the child and/or the child's family
6 with the emotional impact of the crime, the subsequent investigation,
7 and judicial proceedings in which the child is involved.

8 (~~(7)~~) (8) To allow an advocate to be present in court while the
9 child testifies in order to provide emotional support to the child.

10 (~~(8)~~) (9) To provide information to the court as to the need for
11 the presence of other supportive persons at the court proceedings while
12 the child testifies in order to promote the child's feelings of
13 security and safety.

14 (~~(9)~~) (10) To allow law enforcement agencies the opportunity to
15 enlist the assistance of other professional personnel such as child
16 protection services, victim advocates or prosecutorial staff trained in
17 the interviewing of the child victim.

18 (11) With respect to child victims of violent or sex crimes or
19 child abuse, to receive either directly or through the child's parent
20 or guardian if appropriate, at the time of reporting the crime to law
21 enforcement officials, a written statement of the rights of child
22 victims as provided in this chapter. The written statement shall
23 include the name, address, and telephone number of a county or local
24 crime victim/witness program, if such a crime victim/witness program
25 exists in the county.

26 NEW SECTION. **Sec. 9.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

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