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HOUSE BILL 2651

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State of Washington

54th Legislature

1996 Regular Session

By Representatives Ballasiotes, Radcliff, Patterson, Ogden, Poulsen, Chopp, Voloria, Cody, Mason, Scott, Basich, Conway, Cole, Dickerson, Mitchell, Costa and Thompson; by request of Governor Lowry and Attorney General

Read first time 01/16/96. Referred to Committee on Law & Justice.

1 AN ACT Relating to crimes of domestic violence; amending RCW  
2 9.94A.390, 10.99.020, 10.99.040, 10.99.050, and 26.50.110; adding a new  
3 section to chapter 9A.36 RCW; and prescribing penalties.

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

5 **Sec. 1.** RCW 9.94A.390 and 1995 c 316 s 2 are each amended to read  
6 as follows:

7 If the sentencing court finds that an exceptional sentence outside  
8 the standard range should be imposed in accordance with RCW  
9 9.94A.120(2), the sentence is subject to review only as provided for in  
10 RCW 9.94A.210(4).

11 The following are illustrative factors which the court may consider  
12 in the exercise of its discretion to impose an exceptional sentence.  
13 The following are illustrative only and are not intended to be  
14 exclusive reasons for exceptional sentences.

15 (1) Mitigating Circumstances

16 (a) To a significant degree, the victim was an initiator, willing  
17 participant, aggressor, or provoker of the incident.

1 (b) Before detection, the defendant compensated, or made a good  
2 faith effort to compensate, the victim of the criminal conduct for any  
3 damage or injury sustained.

4 (c) The defendant committed the crime under duress, coercion,  
5 threat, or compulsion insufficient to constitute a complete defense but  
6 which significantly affected his or her conduct.

7 (d) The defendant, with no apparent predisposition to do so, was  
8 induced by others to participate in the crime.

9 (e) The defendant's capacity to appreciate the wrongfulness of his  
10 or her conduct or to conform his or her conduct to the requirements of  
11 the law, was significantly impaired (voluntary use of drugs or alcohol  
12 is excluded).

13 (f) The offense was principally accomplished by another person and  
14 the defendant manifested extreme caution or sincere concern for the  
15 safety or well-being of the victim.

16 (g) The operation of the multiple offense policy of RCW 9.94A.400  
17 results in a presumptive sentence that is clearly excessive in light of  
18 the purpose of this chapter, as expressed in RCW 9.94A.010.

19 (h) The defendant or the defendant's children suffered a continuing  
20 pattern of physical or sexual abuse by the victim of the offense and  
21 the offense is a response to that abuse.

22 (2) Aggravating Circumstances

23 (a) The defendant's conduct during the commission of the current  
24 offense manifested deliberate cruelty to the victim.

25 (b) The defendant knew or should have known that the victim of the  
26 current offense was particularly vulnerable or incapable of resistance  
27 due to extreme youth, advanced age, disability, or ill health.

28 (c) The current offense was a major economic offense or series of  
29 offenses, so identified by a consideration of any of the following  
30 factors:

31 (i) The current offense involved multiple victims or multiple  
32 incidents per victim;

33 (ii) The current offense involved attempted or actual monetary loss  
34 substantially greater than typical for the offense;

35 (iii) The current offense involved a high degree of sophistication  
36 or planning or occurred over a lengthy period of time; or

37 (iv) The defendant used his or her position of trust, confidence,  
38 or fiduciary responsibility to facilitate the commission of the current  
39 offense.

1 (d) The current offense was a major violation of the Uniform  
2 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to  
3 trafficking in controlled substances, which was more onerous than the  
4 typical offense of its statutory definition: The presence of ANY of  
5 the following may identify a current offense as a major VUCSA:

6 (i) The current offense involved at least three separate  
7 transactions in which controlled substances were sold, transferred, or  
8 possessed with intent to do so;

9 (ii) The current offense involved an attempted or actual sale or  
10 transfer of controlled substances in quantities substantially larger  
11 than for personal use;

12 (iii) The current offense involved the manufacture of controlled  
13 substances for use by other parties;

14 (iv) The circumstances of the current offense reveal the offender  
15 to have occupied a high position in the drug distribution hierarchy;

16 (v) The current offense involved a high degree of sophistication or  
17 planning or occurred over a lengthy period of time or involved a broad  
18 geographic area of disbursement; or

19 (vi) The offender used his or her position or status to facilitate  
20 the commission of the current offense, including positions of trust,  
21 confidence or fiduciary responsibility (e.g., pharmacist, physician, or  
22 other medical professional).

23 (e) The current offense included a finding of sexual motivation  
24 pursuant to RCW 9.94A.127.

25 (f) The offense was part of an ongoing pattern of sexual abuse of  
26 the same victim under the age of eighteen years manifested by multiple  
27 incidents over a prolonged period of time.

28 (g) The current offense involved domestic violence, as defined in  
29 RCW 10.99.020 and one or more of the following was present:

30 (i) The offense was part of an ongoing pattern of psychological,  
31 physical, or sexual abuse of the victim manifested by multiple  
32 incidents over a prolonged period of time;

33 (ii) The offense occurred in the presence of the victim's minor  
34 children under the age of eighteen years; or

35 (iii) The offender's conduct during the commission of the current  
36 offense manifested deliberate cruelty or intimidation of the victim.

37 (h) The operation of the multiple offense policy of RCW 9.94A.400  
38 results in a presumptive sentence that is clearly too lenient in light  
39 of the purpose of this chapter, as expressed in RCW 9.94A.010.

1       (~~(h)~~) (i) The defendant's prior unscored misdemeanor or prior  
2 unscored foreign criminal history results in a presumptive sentence  
3 that is clearly too lenient in light of the purpose of this chapter as  
4 expressed in RCW 9.94A.010.

5       **NEW SECTION. Sec. 2.** A new section is added to chapter 9A.36 RCW  
6 to read as follows:

7       (1) A person commits the crime of interference with the reporting  
8 of domestic violence if the person prevents or attempts to prevent a  
9 victim of or a witness to domestic violence, as defined in RCW  
10 26.50.010, from calling a 911 emergency communication system, obtaining  
11 medical assistance, or making a report to any law enforcement official.

12       (2) Interference with the reporting of domestic violence is a gross  
13 misdemeanor.

14       **Sec. 3.** RCW 10.99.020 and 1995 c 246 s 21 are each amended to read  
15 as follows:

16       Unless the context clearly requires otherwise, the definitions in  
17 this section apply throughout this chapter.

18       (1) "Family or household members" means spouses, former spouses,  
19 persons who have a child in common regardless of whether they have been  
20 married or have lived together at any time, adult persons related by  
21 blood or marriage, adult persons who are presently residing together or  
22 who have resided together in the past, persons sixteen years of age or  
23 older who are presently residing together or who have resided together  
24 in the past and who have or have had a dating relationship, persons  
25 sixteen years of age or older with whom a respondent sixteen years of  
26 age or older has or has had a dating relationship, and persons who have  
27 a biological or legal parent-child relationship, including stepparents  
28 and stepchildren and grandparents and grandchildren.

29       (2) "Dating relationship" has the same meaning as in RCW 26.50.010.

30       (3) "Domestic violence" includes but is not limited to any of the  
31 following crimes when committed by one family or household member  
32 against another:

33       (a) Assault in the first degree (RCW 9A.36.011);

34       (b) Assault in the second degree (RCW 9A.36.021);

35       (c) Assault in the third degree (RCW 9A.36.031);

36       (d) Assault in the fourth degree (RCW 9A.36.041);

37       (e) Reckless endangerment in the first degree (RCW 9A.36.045);

- 1 (f) Reckless endangerment in the second degree (RCW 9A.36.050);  
2 (g) Coercion (RCW 9A.36.070);  
3 (h) Burglary in the first degree (RCW 9A.52.020);  
4 (i) Burglary in the second degree (RCW 9A.52.030);  
5 (j) Criminal trespass in the first degree (RCW 9A.52.070);  
6 (k) Criminal trespass in the second degree (RCW 9A.52.080);  
7 (l) Malicious mischief in the first degree (RCW 9A.48.070);  
8 (m) Malicious mischief in the second degree (RCW 9A.48.080);  
9 (n) Malicious mischief in the third degree (RCW 9A.48.090);  
10 (o) Kidnapping in the first degree (RCW 9A.40.020);  
11 (p) Kidnapping in the second degree (RCW 9A.40.030);  
12 (q) Unlawful imprisonment (RCW 9A.40.040);  
13 (r) Violation of the provisions of a restraining order restraining  
14 the person or excluding the person from a residence (RCW 26.09.300);  
15 (s) Violation of the provisions of a protection order or no-contact  
16 order restraining the person or excluding the person from a residence  
17 (RCW 26.50.060, 26.50.070, 26.50.130, or 10.99.040);  
18 (t) Rape in the first degree (RCW 9A.44.040);  
19 (u) Rape in the second degree (RCW 9A.44.050);  
20 (v) Residential burglary (RCW 9A.52.025); ((and))  
21 (w) Stalking (RCW 9A.46.110); and  
22 (x) Interference with the reporting of domestic violence (section  
23 2 of this act).

24 (4) "Victim" means a family or household member who has been  
25 subjected to domestic violence.

26 **Sec. 4.** RCW 10.99.040 and 1995 c 246 s 23 are each amended to read  
27 as follows:

28 (1) Because of the serious nature of domestic violence, the court  
29 in domestic violence actions:

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

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

34 (c) Shall waive any requirement that the victim's location be  
35 disclosed to any person, other than the attorney of a criminal  
36 defendant, upon a showing that there is a possibility of further  
37 violence: PROVIDED, That the court may order a criminal defense

1 attorney not to disclose to his or her client the victim's location;  
2 and

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

5 (2) Because of the likelihood of repeated violence directed at  
6 those who have been victims of domestic violence in the past, when any  
7 person charged with or arrested for a crime involving domestic violence  
8 is released from custody before arraignment or trial on bail or  
9 personal recognizance, the court authorizing the release may prohibit  
10 that person from having any contact with the victim. The jurisdiction  
11 authorizing the release shall determine whether that person should be  
12 prohibited from having any contact with the victim. If there is no  
13 outstanding restraining or protective order prohibiting that person  
14 from having contact with the victim, the court authorizing release may  
15 issue, by telephone, a no-contact order prohibiting the person charged  
16 or arrested from having contact with the victim. In issuing the order,  
17 the court shall consider the provisions of RCW 9.41.800. The no-  
18 contact order shall also be issued in writing as soon as possible.

19 (3) At the time of arraignment the court shall determine whether a  
20 no-contact order shall be issued or extended. If a no-contact order is  
21 issued or extended, the court may also include in the conditions of  
22 release a requirement that the defendant submit to electronic  
23 monitoring. If electronic monitoring is ordered, the court shall  
24 specify who shall provide the monitoring services, and the terms under  
25 which the monitoring shall be performed. Upon conviction, the court  
26 may require as a condition of the sentence that the defendant reimburse  
27 the providing agency for the costs of the electronic monitoring.

28 (4)(a) Willful violation of a court order issued under subsection  
29 (2) or (3) of this section is a gross misdemeanor. A third or  
30 subsequent conviction for willful violation of a court order issued  
31 under subsection (2) or (3) of this section is a class C felony  
32 punishable under chapter 9A.20 RCW. Upon conviction and in addition to  
33 other penalties provided by law, the court may require that the  
34 defendant submit to electronic monitoring. The court shall specify who  
35 shall provide the electronic monitoring services and the terms under  
36 which the monitoring must be performed. The court also may include a  
37 requirement that the defendant pay the costs of the monitoring. The  
38 court shall consider the ability of the convicted person to pay for  
39 electronic monitoring.

1 (b) Any assault that is a violation of an order issued under this  
2 section and that does not amount to assault in the first or second  
3 degree under RCW 9A.36.011 or 9A.36.021 is a class C felony punishable  
4 under chapter 9A.20 RCW, and any conduct in violation of a protective  
5 order issued under this section that is reckless and creates a  
6 substantial risk of death or serious physical injury to another person  
7 is a class C felony punishable under chapter 9A.20 RCW.

8 (c) The written order releasing the person charged or arrested  
9 shall contain the court's directives and shall bear the legend:  
10 "Violation of this order is a criminal offense under chapter 10.99 RCW  
11 and will subject a violator to arrest; any assault or reckless  
12 endangerment that is a violation of this order is a felony. You can be  
13 arrested even if any person protected by the order invites or allows  
14 you to violate the order's prohibitions. You have the sole  
15 responsibility to avoid or refrain from violating the order's  
16 provisions. Only the court can change the order." A certified copy of  
17 the order shall be provided to the victim. If a no-contact order has  
18 been issued prior to charging, that order shall expire at arraignment  
19 or within seventy-two hours if charges are not filed. Such orders need  
20 not be entered into the computer-based criminal intelligence  
21 information system in this state which is used by law enforcement  
22 agencies to list outstanding warrants.

23 (5) Whenever an order prohibiting contact is issued, modified, or  
24 terminated under subsection (2) or (3) of this section, the clerk of  
25 the court shall forward a copy of the order on or before the next  
26 judicial day to the appropriate law enforcement agency specified in the  
27 order. Upon receipt of the copy of the order the law enforcement  
28 agency shall forthwith enter the order for one year or until the  
29 expiration date specified on the order into any computer-based criminal  
30 intelligence information system available in this state used by law  
31 enforcement agencies to list outstanding warrants. Entry into the law  
32 enforcement information system constitutes notice to all law  
33 enforcement agencies of the existence of the order. The order is fully  
34 enforceable in any jurisdiction in the state.

35 **Sec. 5.** RCW 10.99.050 and 1991 c 301 s 5 are each amended to read  
36 as follows:

37 (1) When a defendant is found guilty of a crime and a condition of  
38 the sentence restricts the defendant's ability to have contact with the

1 victim, such condition shall be recorded and a written certified copy  
2 of that order shall be provided to the victim.

3 (2) Willful violation of a court order issued under this section is  
4 a misdemeanor. A third or subsequent conviction for willful violation  
5 of a court order issued under this section is a class C felony  
6 punishable under chapter 9A.20 RCW. Any assault that is a violation of  
7 an order issued under this section and that does not amount to assault  
8 in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a  
9 class C felony, and any conduct in violation of a protective order  
10 issued under this section that is reckless and creates a substantial  
11 risk of death or serious physical injury to another person is a class  
12 C felony. The written order shall contain the court's directives and  
13 shall bear the legend: Violation of this order is a criminal offense  
14 under chapter 10.99 RCW and will subject a violator to arrest; any  
15 assault or reckless endangerment that is a violation of this order is  
16 a felony.

17 (3) Whenever an order prohibiting contact is issued pursuant to  
18 this section, the clerk of the court shall forward a copy of the order  
19 on or before the next judicial day to the appropriate law enforcement  
20 agency specified in the order. Upon receipt of the copy of the order  
21 the law enforcement agency shall forthwith enter the order for one year  
22 into any computer-based criminal intelligence information system  
23 available in this state used by law enforcement agencies to list  
24 outstanding warrants. Entry into the law enforcement information  
25 system constitutes notice to all law enforcement agencies of the  
26 existence of the order. The order is fully enforceable in any  
27 jurisdiction in the state.

28 **Sec. 6.** RCW 26.50.110 and 1995 c 246 s 14 are each amended to read  
29 as follows:

30 (1) Whenever an order for protection is granted under this chapter  
31 and the respondent or person to be restrained knows of the order, a  
32 violation of the restraint provisions or of a provision excluding the  
33 person from a residence, workplace, school, or day care is a gross  
34 misdemeanor. A third or subsequent conviction for violating an order  
35 for protection granted under this chapter is a class C felony  
36 punishable under chapter 9A.20 RCW. Upon conviction, and in addition  
37 to any other penalties provided by law, the court may require that the  
38 respondent submit to electronic monitoring. The court shall specify

1 who shall provide the electronic monitoring services, and the terms  
2 under which the monitoring shall be performed. The order also may  
3 include a requirement that the respondent pay the costs of the  
4 monitoring. The court shall consider the ability of the convicted  
5 person to pay for electronic monitoring.

6 (2) A peace officer shall arrest without a warrant and take into  
7 custody a person whom the peace officer has probable cause to believe  
8 has violated an order issued under this chapter that restrains the  
9 person or excludes the person from a residence, workplace, school, or  
10 day care, if the person restrained knows of the order. Presence of the  
11 order in the law enforcement computer-based criminal intelligence  
12 information system is not the only means of establishing knowledge of  
13 the order.

14 (3) A violation of an order for protection shall also constitute  
15 contempt of court, and is subject to the penalties prescribed by law.

16 (4) Any assault that is a violation of an order issued under this  
17 chapter and that does not amount to assault in the first or second  
18 degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any  
19 conduct in violation of a protective order issued under this chapter  
20 that is reckless and creates a substantial risk of death or serious  
21 physical injury to another person is a class C felony.

22 (5) Upon the filing of an affidavit by the petitioner or any peace  
23 officer alleging that the respondent has violated an order for  
24 protection granted under this chapter, the court may issue an order to  
25 the respondent, requiring the respondent to appear and show cause  
26 within fourteen days why the respondent should not be found in contempt  
27 of court and punished accordingly. The hearing may be held in the  
28 court of any county or municipality in which the petitioner or  
29 respondent temporarily or permanently resides at the time of the  
30 alleged violation.

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