

ESSB 5231 - H COMM AMD

By Committee on Civil Rights & Judiciary

ADOPTED 04/10/2023

1 Strike everything after the enacting clause and insert the
2 following:

3 **"Sec. 1.** RCW 10.99.040 and 2021 c 215 s 122 are each amended
4 to read as follows:

5 (1) Because of the serious nature of domestic violence, the
6 court in domestic violence actions:

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

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

11 (c) Shall waive any requirement that the victim's location be
12 disclosed to any person, other than the attorney of a criminal
13 defendant, upon a showing that there is a possibility of further
14 violence: PROVIDED, That the court may order a criminal defense
15 attorney not to disclose to his or her client the victim's location;
16 ((and))

17 (d) Shall identify by any reasonable means on docket sheets
18 those criminal actions arising from acts of domestic violence;

19 (e) Shall not deny issuance of a no-contact order based on the
20 existence of an applicable civil protection order preventing the
21 defendant from contacting the victim; and

22 (f) When issuing a no-contact order, shall attempt to determine
23 whether there are any other active no-contact orders, protection
24 orders, or restraining orders involving the defendant to assist the
25 court in ensuring that any no-contact order it may impose does not
26 lessen protections imposed by other courts under other such orders.

27

1 (2)(a) Because of the likelihood of repeated violence directed
2 at those who have been victims of domestic violence in the past,
3 when any person charged with or arrested for a crime involving
4 domestic violence is released from custody before arraignment or
5 trial on bail or personal recognizance, the court authorizing the
6 release may prohibit that person from having any contact with the
7 victim and others. The jurisdiction authorizing the release shall
8 determine whether that person should be prohibited from having any
9 contact with the victim. (~~If there is no outstanding restraining or~~
10 ~~protective order prohibiting that person from having contact with~~
11 ~~the victim, the~~) The court authorizing release may issue(~~, by~~
12 ~~telephone,~~) a no-contact order (~~prohibiting~~) that:

13 (i) Prohibits the person charged or arrested from (~~having~~)
14 making any attempt to contact (~~with the victim or~~), including
15 nonphysical contact, the victim or the victim's family or household
16 members, either directly, indirectly, or through a third party;

17 (ii) Excludes the defendant from a residence shared with the
18 victim, or from a workplace, school, or child care;

19 (iii) Prohibits the person from knowingly coming within, or
20 knowingly remaining within, a specified distance of a location or
21 vehicle; and

22 (iv) Includes other related prohibitions to reduce risk of harm.

23 (b) (~~In issuing the order, the court shall consider the~~
24 ~~provisions of~~) The court shall verify that the requirements of RCW
25 10.99.030(3) have been satisfied, including that a sworn statement
26 of a peace officer has been submitted to the court, documenting that
27 the responding peace officers separated the parties and asked the
28 victim or victims at the scene about firearms, other dangerous
29 weapons, and ammunition that the defendant owns or has access to,
30 and whether the defendant has a concealed pistol license. If the
31 sworn statement of a peace officer or other information provided to
32 the court indicates there may be a risk of harm if the defendant has
33 access to firearms, dangerous weapons, or an active concealed pistol
34 license, the court shall verify that peace officers have temporarily

1 removed and secured all the firearms, dangerous weapons, and any
2 concealed pistol license. The court shall then determine whether an
3 order to surrender and prohibit weapons or an extreme risk
4 protection order should be issued pursuant to RCW 9.41.800 or
5 chapter 7.105 RCW, ((and shall order the defendant to surrender, and
6 prohibit)) prohibiting the ((person)) defendant from possessing,
7 ((all)) purchasing, receiving, having in the defendant's control or
8 custody, accessing, or attempting to purchase or receive, any
9 firearms, dangerous weapons, and any concealed pistol license and
10 shall order the defendant to surrender, and prohibit the defendant
11 from possessing, any firearms, dangerous weapons, and any concealed
12 pistol license as required in RCW 9.41.800, or shall issue an
13 extreme risk protection order as required by chapter 7.105 RCW. The
14 court may make these determinations on the record or off the record
15 with a written explanation when declining to impose the restrictions
16 authorized in this subsection.

17 ~~((c) The no contact order shall also be issued in writing as~~
18 ~~soon as possible, and shall state that it may be extended as~~
19 ~~provided in subsection (3) of this section. By January 1, 2011, the~~
20 ~~administrative office of the courts shall develop a pattern form for~~
21 ~~all no contact orders issued under this chapter. A no contact order~~
22 ~~issued under this chapter must substantially comply with the pattern~~
23 ~~form developed by the administrative office of the courts.))~~

24 (3)(a) At the time of arraignment, the court shall review the
25 defendant's firearms purchase history provided by the prosecutor
26 pursuant to RCW 10.99.045, and any other firearms information
27 provided by law enforcement or court or jail staff, and shall
28 determine whether a no-contact order, an order to surrender and
29 prohibit weapons, or an extreme risk protection order shall be
30 issued or, if previously issued, extended.

31 (b) So long as the court finds probable cause, the court may
32 issue or extend a no-contact order, an order to surrender and
33 prohibit weapons, or an extreme risk protection order, even if the
34 defendant fails to appear at arraignment. The no-contact order shall

1 terminate if the defendant is acquitted or the charges are
2 dismissed. To the extent the court is aware, the court shall advise
3 the defendant of the ongoing requirements of any other no-contact,
4 restraining, or protection order that remains in effect.

5 ~~((b) In issuing the order, the court shall consider all
6 information documented in the incident report concerning the
7 person's possession of and access to firearms and whether law
8 enforcement took temporary custody of firearms at the time of the
9 arrest. The court may as a condition of release prohibit the
10 defendant from possessing or accessing firearms and order the
11 defendant to immediately surrender all firearms and any concealed
12 pistol license to a law enforcement agency upon release.))~~

13 (c) If a no-contact order is issued or extended, the court may
14 also include in the conditions of release a requirement that the
15 defendant submit to electronic monitoring as defined in RCW 9.94A.
16 030. If electronic monitoring is ordered, the court shall specify
17 who shall provide the monitoring services, and the terms under which
18 the monitoring shall be performed. Upon conviction, the court may
19 require as a condition of the sentence that the defendant reimburse
20 the providing agency for the costs of the electronic monitoring.

21 (4)(a) Willful violation of a court order issued under
22 ~~((subsection (2), (3), or (7) of))~~ this section is punishable as
23 provided under RCW 7.105.450 or 7.105.460, or chapter 9.41 RCW.

24 (b) The written order releasing the person charged or arrested
25 shall contain the court's directives and shall bear the legend:
26 "Violation of this order is a criminal offense under chapter 7.105
27 RCW and will subject a violator to arrest; any assault, drive-by
28 shooting, or reckless endangerment that is a violation of this order
29 is a felony. You can be arrested even if any person protected by the
30 order invites or allows you to violate the order's prohibitions. You
31 have the sole responsibility to avoid or refrain from violating the
32 order's provisions. Only the court can change the order."

33 (c) A certified copy of the order shall be provided to the victim.

34

1 (5)(a) A peace officer may request, on an ex parte basis and
2 before criminal charges or a petition for a protection order or an
3 extreme risk protection order have been filed, an emergency no-
4 contact order, order to surrender and prohibit weapons, or extreme
5 risk protection order from a judicial officer on behalf of and with
6 the consent of the victim of an alleged act involving domestic
7 violence if the victim is able to provide such consent. If the
8 victim is incapacitated as a result of the alleged act of domestic
9 violence, a peace officer may request an emergency no-contact order,
10 order to surrender and prohibit weapons, or extreme risk protection
11 order on his or her behalf. The request shall be made based upon the
12 sworn statement of a peace officer and may be made in person, by
13 telephone, or by electronic means. If the court finds probable cause
14 to believe that the victim is in imminent danger of domestic
15 violence based on an allegation of the recent commission of an act
16 involving domestic violence, the court shall issue an emergency no-
17 contact order and an order to surrender and prohibit weapons or an
18 extreme risk protection order as required by RCW 9.41.800 or chapter
19 7.105 RCW. An emergency no-contact order issued by a court will
20 remain in effect until either the court terminates the emergency no-
21 contact order, the court finds probable cause for a referred crime,
22 or an ex parte hearing is held on a petition for a protection order
23 or extreme risk protection order.

24 (b) If the court issues an order to surrender and prohibit
25 weapons or an extreme risk protection order, and has not verified
26 that peace officers have temporarily removed and secured all
27 firearms and dangerous weapons, and any concealed pistol license,
28 all orders issued by the court must be personally served by a peace
29 officer and the peace officer shall take possession of all firearms,
30 dangerous weapons, and any concealed pistol license belonging to the
31 respondent that are surrendered, in plain sight, or discovered
32 pursuant to a lawful search, as required by RCW 9.41.801.

33 (c) If the court does not issue an order to surrender and
34 prohibit weapons or an extreme risk protection order, or has

1 verified that all firearms, dangerous weapons, and any concealed
2 pistol license have been temporarily removed by law enforcement,
3 service of the court's orders may be effected electronically.
4 Electronic service must be effected by a law enforcement agency
5 transmitting copies of the petition and any supporting materials
6 filed with the petition, any notice of hearing, and any orders, or
7 relevant materials for motions, to the defendant at the defendant's
8 electronic address or the defendant's electronic account associated
9 with email, text messaging, social media applications, or other
10 technologies. Verification of notice is required and may be
11 accomplished through read-receipt mechanisms, a response, a sworn
12 statement from the person who effected service verifying
13 transmission and any follow-up communications such as email or
14 telephone contact used to further verify, or an appearance by the
15 defendant at a hearing. Sworn proof of service must be filed with
16 the court by the person who effected service.

17 (d) A no-contact order, order to surrender and prohibit weapons,
18 or extreme risk protection order authorized by telephonic or
19 electronic means shall also be issued in writing as soon as possible
20 and shall state that it may be extended as provided in subsection
21 (3) of this section.

22 (6) If a no-contact order has been issued prior to charging,
23 that order shall expire at arraignment or within seventy-two hours
24 if charges are not filed.

25 ~~((+6+))~~ (7) Whenever ((a no contact)) an order is issued,
26 modified, or terminated under ((subsection (2) or (3) of)) this
27 section, the clerk of the court shall forward a copy of the order on
28 or before the next judicial day to the appropriate law enforcement
29 agency specified in the order. Upon receipt of the copy of the order
30 the law enforcement agency shall enter the order for one year or
31 until the expiration date specified on the order into any computer-
32 based criminal intelligence information system available in this
33 state used by law enforcement agencies to list outstanding warrants.
34 Entry into the computer-based criminal intelligence information

1 system constitutes notice to all law enforcement agencies of the
2 existence of the order. The order is fully enforceable in any
3 jurisdiction in the state. Upon receipt of notice that an order has
4 been terminated under subsection (3) of this section, the law
5 enforcement agency shall remove the order from the computer-based
6 criminal intelligence information system.

7 ~~((7) All courts shall develop policies and procedures by
8 January 1, 2011, to grant victims a process to modify or rescind a
9 no-contact order issued under this chapter. The administrative
10 office of the courts shall develop a model policy to assist the
11 courts in implementing the requirements of this subsection.))~~

12 (8) For the purposes of this section, and unless context clearly
13 requires otherwise, "emergency no-contact order" means a no-contact
14 order issued by a court of competent jurisdiction before criminal
15 charges have been filed or before a petition for a protection order
16 or extreme risk protection order has been filed.

17
18 NEW SECTION. Sec. 2. 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."

22

23 Correct the title.

24

EFFECT: Provides that a court must not deny issuance of a no-
contact order based on the existence of a civil protection order
prohibiting the defendant from contacting the victim.

Allows the court, when verifying that officers have complied with
their duties and that firearms were removed, to make these
determinations on or off the record, with a written explanation when
declining to impose no-contact order restrictions.

Defines "emergency no-contact order" as a no-contact order issued by
a court before criminal charges have been filed or a petition for a
protection order or extreme risk protection order has been filed.
Provides that an emergency no-contact order will remain in effect
until either the court terminates the emergency no-contact order,

the court finds probable cause for a referred crime, or an ex parte hearing is held on a petition for a protection order or extreme risk protection order.

Provides that at arraignment the court must consider whether to extend any previously issued no-contact order, not just those issued on an emergency basis.

Adds a severability clause, reorganizes language for clarity, and makes technical corrections.

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