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ENGROSSED SECOND SUBSTITUTE SENATE BILL 6347

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State of Washington

52nd Legislature

1992 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Nelson, A. Smith, Erwin, Madsen, Rinehart, Thorsness and von Reichbauer)

Read first time 02/11/92.

1 AN ACT Relating to domestic violence; amending RCW 26.50.030,  
2 26.50.035, 26.50.060, 10.99.030, 26.50.010, 26.50.020, 4.08.050,  
3 12.04.140, 12.04.150, and 26.28.015; and creating new sections.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that:

6 Domestic violence is a problem of immense proportions affecting  
7 individuals as well as communities. Domestic violence has long been  
8 recognized as being at the core of other major social problems: Child  
9 abuse, other crimes of violence against person or property, juvenile  
10 delinquency, and alcohol and drug abuse. Domestic violence costs  
11 millions of dollars each year in the state of Washington for health  
12 care, absence from work, services to children, and more. The crisis is  
13 growing.

1       While the existing protection order process can be a valuable tool  
2 to increase safety for victims and to hold batterers accountable,  
3 specific problems in its use have become evident. Victims have  
4 difficulty completing the paperwork required particularly if they have  
5 limited English proficiency; model forms have been modified to be  
6 inconsistent with statutory language; different forms create confusion  
7 for law enforcement agencies about the contents and enforceability of  
8 orders. Refinements are needed so that victims have the easy, quick,  
9 and effective access to the court system envisioned at the time the  
10 protection order process was first created.

11       When courts issue mutual protection orders without the filing of  
12 separate written petitions, notice to each respondent, and hearing on  
13 each petition, the original petitioner is deprived of due process.  
14 Mutual protection orders label both parties as violent and treat both  
15 as being equally at fault: Batterers conclude that the violence is  
16 excusable or provoked and victims who are not violent are confused and  
17 stigmatized. Enforcement may be ineffective and mutual orders may be  
18 used in other proceedings as evidence that the victim is equally at  
19 fault.

20       Valuable information about the reported incidents of domestic  
21 violence in the state of Washington is unobtainable without gathering  
22 data from all law enforcement agencies; without this information, it is  
23 difficult for policymakers, funders, and service providers to plan for  
24 the resources and services needed to address the issue.

25       Domestic violence must be addressed more widely and more  
26 effectively in our state: Greater knowledge by professionals who deal  
27 frequently with domestic violence is essential to enforce existing  
28 laws, to intervene in domestic violence situations that do not come to  
29 the attention of the law enforcement or judicial systems, and to reduce

1 and prevent domestic violence by intervening before the violence  
2 becomes severe.

3 Adolescent dating violence is occurring at increasingly high rates:  
4 Preventing and confronting adolescent violence is important in  
5 preventing potential violence in future adult relationships.

6 **Sec. 2.** RCW 26.50.030 and 1985 c 303 s 2 are each amended to read  
7 as follows:

8 There shall exist an action known as a petition for an order for  
9 protection in cases of domestic violence.

10 (1) A petition for relief shall allege the existence of domestic  
11 violence, and shall be accompanied by an affidavit made under oath  
12 stating the specific facts and circumstances from which relief is  
13 sought.

14 (2) A petition for relief may be made regardless of whether or not  
15 there is a pending lawsuit, complaint, petition, or other action  
16 between the parties except in cases where the court realigns petitioner  
17 and respondent in accordance with RCW 26.50.060(3).

18 (3) Within ninety days of receipt of the master copy from the  
19 administrator for the courts, all court clerk's offices shall make  
20 available ((simplified)) the standardized forms, instructions, and  
21 ((instructional)) informational brochures required by RCW 26.50.035 and  
22 shall fill in and keep current specific program names and telephone  
23 numbers for community resources. Any assistance or information  
24 provided by clerks under this section does not constitute the practice  
25 of law and clerks are not responsible for incorrect information  
26 contained in a petition.

27 (4) A filing fee of twenty dollars shall be charged for proceedings  
28 under this section. No filing fee may be charged for: (a) A petition  
29 filed in an existing action or under an existing cause number brought

1 under this chapter in the jurisdiction where the relief is sought; or  
2 (b) the transfer of a case from district or municipal court to superior  
3 court under RCW 26.50.020(2). Forms and instructional brochures shall  
4 be provided free of charge.

5 (5) A person is not required to post a bond to obtain relief in any  
6 proceeding under this section.

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

9 By January 1, 1993, the administrator for the courts shall develop  
10 and prepare, in consultation with interested persons, to include a  
11 representative of the state domestic violence coalition, judges, and  
12 law enforcement personnel, ((the—forms)) instructions and  
13 ((instructional)) informational brochures required under RCW  
14 26.50.030(3), standard petition and order for protection forms that  
15 must be used after April 15, 1993, for all petitions filed and orders  
16 issued under this chapter, and a court staff handbook on domestic  
17 violence and the protection order process. The instructions shall be  
18 designed to assist petitioners in completing the petition. The  
19 informational brochure shall describe the use of and the process for  
20 obtaining a protection order, a no contact order as provided by RCW  
21 10.99.040, a restraining order as provided by RCW 26.09.060, and an  
22 antiharassment protection order as provided by chapter 10.14 RCW, along  
23 with a list of local community resources. The community resources  
24 shall be in the form of a list that includes law enforcement agencies,  
25 domestic violence agencies, sexual assault agencies, legal assistance  
26 programs, interpreters, multicultural programs, and batterers'  
27 treatment programs, which shall contain the names and telephone numbers  
28 of programs serving the community in which the court is located. Court  
29 staff shall obtain the community resource list from a domestic violence

1 program as defined in RCW 70.123.020 serving the county in which the  
2 court is located. The order for protection form shall include, in a  
3 conspicuous location, notice of criminal penalties resulting from  
4 violation of the order, notice that the petitioner may not waive any  
5 provisions of the order, and notice that it is the sole responsibility  
6 of the respondent to avoid or refrain from violating the provisions of  
7 the order. The administrator for the courts shall distribute a master  
8 copy of the petition and order forms ((and—instructional)),  
9 instructions, and informational brochures to ((all—court clerks)) the  
10 staff of all courts and shall distribute a master copy of the order  
11 forms to all superior, district, and municipal courts.

12 The administrator for the courts shall arrange for translation of  
13 the instructions and informational brochures into Spanish, Vietnamese,  
14 Laotian, Cambodian, and Chinese and shall distribute a master copy of  
15 the translated instructions and informational brochures to all court  
16 clerks by March 1, 1993.

17 The administrator for the courts shall, in consultation with  
18 interested parties to include a representative of the state domestic  
19 violence coalition, judges, law enforcement personnel, and staff from  
20 multicultural programs, determine by June 30, 1993, whether translation  
21 of the petition and standard order forms would substantially improve  
22 access to the protection order process for those with limited English  
23 proficiency. If so, the administrator for the courts shall arrange for  
24 the translation of the petition and standard order forms into Spanish,  
25 Vietnamese, Laotian, Cambodian, and Chinese, and shall distribute a  
26 master copy of the translated petition and standard order forms to all  
27 court staff by September 1, 1993, along with any necessary instructions  
28 or explanations for use of the translated petition and standard order  
29 forms.

1       **Sec. 4.** RCW 26.50.060 and 1989 c 411 s 1 are each amended to read  
2 as follows:

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

5       (a) Restrain (~~(a party)~~) the respondent from committing acts of  
6 domestic violence;

7       (b) Exclude the respondent from the dwelling which the parties  
8 share or from the residence of the petitioner;

9       (c) On the same basis as is provided in chapter 26.09 RCW, the  
10 court shall make residential provision with regard to minor children of  
11 the parties. However, parenting plans as specified in chapter 26.09  
12 RCW shall not be required under this chapter;

13       (d) Order the respondent to participate in batterers' treatment  
14 (~~(or counseling services)~~);

15       (e) Order other relief as it deems necessary for the protection of  
16 (~~(a)~~) the petitioner and other family or household members sought to be  
17 protected, including orders or directives to a peace officer, as  
18 allowed under this chapter;

19       (f) Require the respondent to pay the filing fee and court costs,  
20 including service fees, and to reimburse the petitioner for costs  
21 incurred in bringing the action, including a reasonable attorney's fee.  
22 If the petitioner has been granted leave to proceed in forma pauperis,  
23 the court may require the respondent to pay the filing fee and costs,  
24 including services fees, to the county or municipality incurring the  
25 expense; and

26       (g) Restrain (~~(any party)~~) the respondent from having any contact  
27 with the victim of domestic violence or the victim's children or  
28 members of the victim's household.

29       (2) Any relief granted by the order for protection, other than a  
30 judgment for costs, shall be for a fixed period not to exceed one year.

1 (3) In providing relief under this chapter, the court may realign  
2 the designation of the parties as "petitioner" and "respondent" where  
3 the court finds that the original petitioner is the abuser and the  
4 original respondent is the victim of domestic violence and may issue an  
5 ex parte temporary order for protection in accordance with RCW  
6 26.50.070 on behalf of the victim until the victim is able to prepare  
7 a petition for an order for protection in accordance with RCW  
8 26.50.030.

9 (4) Except as provided in subsection (3) of this section, no order  
10 for protection shall grant relief to any party except upon notice to  
11 the respondent and hearing pursuant to a petition or counter-petition  
12 filed and served by the party seeking relief in accordance with RCW  
13 26.50.050.

14 **Sec. 5.** RCW 10.99.030 and 1984 c 263 s 21 are each amended to read  
15 as follows:

16 (1) All training relating to the handling of domestic violence  
17 complaints by law enforcement officers shall stress enforcement of  
18 criminal laws in domestic situations, availability of community  
19 resources, and protection of the victim. Law enforcement agencies and  
20 community organizations with expertise in the issue of domestic  
21 violence shall cooperate in all aspects of such training.

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

25 (3)(a) When a peace officer responds to a domestic violence call  
26 and has probable cause to believe that a crime has been committed, the  
27 peace officer shall exercise arrest powers with reference to the  
28 criteria in RCW 10.31.100. The officer shall notify the victim of the  
29 victim's right to initiate a criminal proceeding in all cases where the

1 officer has not exercised arrest powers or decided to initiate criminal  
2 proceedings by citation or otherwise. The parties in such cases shall  
3 also be advised of the importance of preserving evidence.

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

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

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



1 Information about shelters and alternatives to domestic violence is  
2 available from a state-wide twenty-four-hour toll-free hotline at  
3 1-800-562-6025. The battered women's shelter and other resources  
4 in your area are --- (include local information)"

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

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

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

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

18 (9) Commencing January 1, 1993, records of incidents of domestic  
19 violence shall be submitted, in accordance with procedures described in  
20 this subsection, to the Washington association of sheriffs and police  
21 chiefs by all law enforcement agencies. The Washington criminal  
22 justice training commission shall amend its contract for collection of  
23 state-wide crime data with the Washington association of sheriffs and  
24 police chiefs: (a) To require the compilation, presentation, and  
25 inclusion of domestic violence incidents in the annual report of crime  
26 in Washington produced by the Washington association of sheriffs and  
27 police chiefs pursuant to such contract; and (b) to require that, in  
28 consultation with interested persons, the Washington association of  
29 sheriffs and police chiefs prepare and disseminate procedures to all

1 law enforcement agencies in the state as to how such agencies shall  
2 code and report domestic violence incidents to the Washington  
3 association of sheriffs and police chiefs.

4 NEW SECTION. **Sec. 6.** The departments of social and health  
5 services, community development, and health; the administrator for the  
6 courts; and the criminal justice training commission, in cooperation  
7 with each other and with the department of social and health services  
8 as lead agency shall, in consultation with interested parties, conduct  
9 a review of and issue a report on the current level of domestic  
10 violence education in the state of Washington, including higher  
11 education curricula and continuing professional education for  
12 individuals working in positions that involve duties to, or contact  
13 with, those affected by domestic violence. Professions for which  
14 education levels should be determined include, but are not limited to,  
15 health care, mental health, and substance abuse professionals licensed  
16 or certified by the state and pastoral counselors, employee assistance  
17 counselors, police and law enforcement officers, prosecutors, judges,  
18 court administrators, court clerks, probation officers, parole  
19 officers, child protective service workers, school counselors,  
20 teachers, and clergy. The analysis shall include suggested approaches  
21 of how to achieve any needed additional education, and an evaluation of  
22 whether there is a need for additional domestic violence education for  
23 some or all of these professions, either as part of their higher  
24 education curricula or through continuing education or both. The  
25 department of social and health services shall report to the house of  
26 representatives judiciary and senate law and justice committees  
27 regarding its findings and recommendations by September 1, 1992.

1       **Sec. 7.** RCW 26.50.010 and 1991 c 301 s 8 are each amended to read  
2 as follows:

3       As used in this chapter, the following terms shall have the  
4 meanings given them:

5       (1) "Domestic violence" means: (a) Physical harm, bodily injury,  
6 assault, or the infliction of fear of imminent physical harm, bodily  
7 injury or assault, between family or household members; or (b) sexual  
8 assault of one family or household member by another.

9       (2) "Family or household members" means spouses, former spouses,  
10 persons who have a child in common regardless of whether they have been  
11 married or have lived together at any time, adult persons related by  
12 blood or marriage, ~~((and))~~ adult persons who are presently residing  
13 together or who have resided together in the past, persons sixteen  
14 years of age or older who are presently residing together or who have  
15 resided together in the past and who have or have had a dating  
16 relationship, persons sixteen years of age or older with whom a  
17 respondent sixteen years of age or older has or has had a dating  
18 relationship, and persons who have a biological or legal parent-child  
19 relationship, including stepparents and stepchildren and grandparents  
20 and grandchildren.

21       (3) "Dating relationship" means a social relationship of a romantic  
22 nature. Factors that the court may consider in making this  
23 determination include: (a) The length of time the relationship has  
24 existed; (b) the nature of the relationship; and (c) the frequency of  
25 interaction between the parties.

26       (4) "Court" includes the superior, district, and municipal courts  
27 of the state of Washington.

28       ~~((4))~~ (5) "Judicial day" does not include Saturdays, Sundays, or  
29 legal holidays.

1       **Sec. 8.** RCW 26.50.020 and 1989 c 375 s 28 are each amended to read  
2 as follows:

3       (1) Any person may seek relief under this chapter by filing a  
4 petition with a court alleging that the person has been the victim of  
5 domestic violence committed by the respondent. The person may petition  
6 for relief on behalf of himself or herself and on behalf of minor  
7 family or household members.

8       (2) A person under eighteen years of age who is sixteen years of  
9 age or older may seek relief under this chapter and is not required to  
10 seek relief by a guardian or next friend.

11       (3) No guardian or guardian ad litem need be appointed on behalf of  
12 a respondent to an action under this chapter who is under eighteen  
13 years of age if such respondent is sixteen years of age or older.

14       (4) The court may, if it deems necessary, appoint a guardian ad  
15 litem for a petitioner or respondent who is a party to an action under  
16 this chapter.

17       (5) The courts defined in RCW 26.50.010(3) have jurisdiction over  
18 proceedings under this chapter. The jurisdiction of district and  
19 municipal courts under this chapter shall be limited to enforcement of  
20 RCW 26.50.110(1), or the equivalent municipal ordinance, and the  
21 issuance and enforcement of temporary orders for protection provided  
22 for in RCW 26.50.070 if: (a) A superior court has exercised or is  
23 exercising jurisdiction over a proceeding under this title or chapter  
24 13.34 RCW involving the parties; (b) the petition for relief under this  
25 chapter presents issues of residential schedule of and contact with  
26 children of the parties; or (c) the petition for relief under this  
27 chapter requests the court to exclude a party from the dwelling which  
28 the parties share. When the jurisdiction of a district or municipal  
29 court is limited to the issuance and enforcement of a temporary order,  
30 the district or municipal court shall set the full hearing provided for

1 in RCW 26.50.050 in superior court and transfer the case. If the  
2 notice and order are not served on the respondent in time for the full  
3 hearing, the issuing court shall have concurrent jurisdiction with the  
4 superior court to extend the order for protection.

5 ~~((3))~~ (6) An action under this chapter shall be filed in the  
6 county or the municipality where the petitioner resides, unless the  
7 petitioner has left the residence or household to avoid abuse. In that  
8 case, the petitioner may bring an action in the county or municipality  
9 of the previous or the new household or residence.

10 ~~((4))~~ (7) A person's right to petition for relief under this  
11 chapter is not affected by the person leaving the residence or  
12 household to avoid abuse.

13 **Sec. 9.** RCW 4.08.050 and 1891 c 30 s 1 are each amended to read as  
14 follows:

15 Except as provided under RCW 26.50.020, when an infant is a party  
16 he or she shall appear by guardian, or if he or she has no guardian, or  
17 in the opinion of the court the guardian is an improper person, the  
18 court shall appoint one to act. Said guardian shall be appointed as  
19 follows:

20 (1) When the infant is plaintiff, upon the application of the  
21 infant, if he or she be of the age of fourteen years, or if under that  
22 age, upon the application of a relative or friend of the infant.

23 (2) When the infant is defendant, upon the application of the  
24 infant, if he or she be of the age of fourteen years, and applies  
25 within thirty days after the service of the summons; if he or she be  
26 under the age of fourteen, or neglects to apply, then upon the  
27 application of any other party to the action, or of a relative or  
28 friend of the infant.

1       **Sec. 10.** RCW 12.04.140 and 1971 ex.s. c 292 s 75 are each amended  
2 to read as follows:

3       Except as provided under RCW 26.50.020, no action shall be  
4 commenced by any person under the age of eighteen years, except by his  
5 guardian, or until a next friend for such a person shall have been  
6 appointed. Whenever requested, the justice shall appoint some suitable  
7 person, who shall consent thereto in writing, to be named by such  
8 plaintiff, to act as his or her next friend in such action, who shall  
9 be responsible for the costs therein.

10       **Sec. 11.** RCW 12.04.150 and 1971 ex.s. c 292 s 76 are each amended  
11 to read as follows:

12       After service and return of process against a defendant under the  
13 age of eighteen years, the action shall not be further prosecuted,  
14 until a guardian for such defendant shall have been appointed, except  
15 as provided under RCW 26.50.020. Upon the request of such defendant,  
16 the justice shall appoint some person who shall consent thereto in  
17 writing, to be guardian of the defendant in defense of the action; and  
18 if the defendant shall not appear on the return day of the process, or  
19 if he or she neglect or refuse to nominate such guardian, the justice  
20 may, at the request of the plaintiff, appoint any discreet person as  
21 such guardian. The consent of the guardian or next friend shall be  
22 filed with the justice; and such guardian for the defendant shall not  
23 be liable for any costs in the action.

24       **Sec. 12.** RCW 26.28.015 and 1971 ex.s. c 292 s 2 are each amended  
25 to read as follows:

26       Notwithstanding any other provision of law, and except as provided  
27 under RCW 26.50.020, all persons shall be deemed and taken to be of

1 full age for the specific purposes hereafter enumerated at the age of  
2 eighteen years:

3 (1) To enter into any marriage contract without parental consent if  
4 otherwise qualified by law;

5 (2) To execute a will for the disposition of both real and personal  
6 property if otherwise qualified by law;

7 (3) To vote in any election if authorized by the Constitution and  
8 otherwise qualified by law;

9 (4) To enter into any legal contractual obligation and to be  
10 legally bound thereby to the full extent as any other adult person;

11 (5) To make decisions in regard to their own body and the body of  
12 their lawful issue whether natural born to or adopted by such person to  
13 the full extent allowed to any other adult person including but not  
14 limited to consent to surgical operations;

15 (6) To sue and be sued on any action to the full extent as any  
16 other adult person in any of the courts of this state, without the  
17 necessity for a guardian ad litem.

18 NEW SECTION. **Sec. 13.** (1) If specific funding for the purposes  
19 of sections 2 and 3 of this act, referencing sections 2 and 3 of this  
20 act by bill and section number, is not provided by June 30, 1992, in  
21 the omnibus appropriations act, sections 2 and 3 of this act shall be  
22 null and void.

23 (2) If specific funding for the purposes of section 5 of this act,  
24 referencing section 5 of this act by bill and section number, is not  
25 provided by June 30, 1992, in the omnibus appropriations act, section  
26 5 of this act shall be null and void.

27 NEW SECTION. **Sec. 14.** If any provision of this act or its  
28 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.