

2 EHB 2236 - S COMM AMD

3 By Committee on Law & Justice

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5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 9A.46.110 and 1992 c 186 s 1 are each amended to read
8 as follows:

9 (1) A person commits the crime of stalking if, without lawful
10 authority and under circumstances not amounting to a felony attempt of
11 another crime:

12 (a) He or she intentionally and repeatedly harasses or repeatedly
13 follows another person (~~((to that person's home, school, place of~~
14 ~~employment, business, or any other location, or follows the person~~
15 ~~while the person is in transit between locations))~~); and

16 (b) The person being harassed or followed is (~~((intimidated,~~
17 ~~harassed, or))~~ placed in fear that the stalker intends to injure the
18 person, another person, or property of the person (~~((being followed))~~ or
19 of another person. The feeling of fear(~~((, intimidation, or~~
20 ~~harassment))~~) must be one that a reasonable person in the same situation
21 would experience under all the circumstances; and

22 (c) The stalker either:

23 (i) Intends to frighten, intimidate, or harass the person (~~((being~~
24 ~~followed))~~); or

25 (ii) Knows or reasonably should know that the person (~~((being~~
26 ~~followed))~~) is afraid, intimidated, or harassed even if the stalker did
27 not intend to place the person in fear or intimidate or harass the
28 person.

29 (2)(a) It is not a defense to the crime of stalking under
30 subsection (1)(c)(i) of this section that the stalker was not given
31 actual notice that the person (~~((being followed))~~) did not want the
32 stalker to contact or follow the person; and

33 (b) It is not a defense to the crime of stalking under subsection
34 (1)(c)(ii) of this section that the stalker did not intend to frighten,
35 intimidate, or harass the person (~~((being followed))~~).

1 (3) It shall be a defense to the crime of stalking that the
2 defendant is a licensed private detective acting within the capacity of
3 his or her license as provided by chapter 18.165 RCW.

4 (4) Attempts to contact or follow the person after being given
5 actual notice that the person does not want to be contacted or followed
6 constitutes prima facie evidence that the stalker intends to intimidate
7 or harass the person.

8 (5) A person who stalks another person is guilty of a gross
9 misdemeanor except that the person is guilty of a class C felony if any
10 of the following applies: (a) The stalker has previously been
11 convicted in this state or any other state of any crime of harassment,
12 as defined in RCW 9A.46.060, of the same victim or members of the
13 victim's family or household or any person specifically named in a
14 ~~((no contact order or no harassment))~~ protective order; (b) the
15 ~~((person))~~ stalking violates ((a court)) any protective order ((issued
16 ~~pursuant to RCW 9A.46.040))~~ protecting the person being stalked; ((or))
17 (c) the stalker has previously been convicted of a gross misdemeanor or
18 felony stalking offense under this section for stalking another person;
19 (d) the stalker was armed with a deadly weapon, as defined in RCW
20 9.94A.125, while stalking the person; (e) the stalker's victim is or
21 was a law enforcement officer, judge, juror, attorney, victim advocate,
22 legislator, or community correction's officer, and the stalker stalked
23 the victim to retaliate against the victim for an act the victim
24 performed during the course of official duties or to influence the
25 victim's performance of official duties; or (f) the stalker's victim is
26 a current, former, or prospective witness in an adjudicative
27 proceeding, and the stalker stalked the victim to retaliate against the
28 victim as a result of the victim's testimony or potential testimony.

29 (6) As used in this section:

30 (a) "Follows" means deliberately maintaining visual or physical
31 proximity to a specific person over a period of time. A finding that
32 the alleged stalker repeatedly and deliberately appears at the person's
33 home, school, place of employment, business, or any other location to
34 maintain visual or physical proximity to the person is sufficient to
35 find that the alleged stalker follows the person. It is not necessary
36 to establish that the alleged stalker follows the person while in
37 transit from one location to another.

38 (b) "Harasses" means unlawful harassment as defined in RCW
39 10.14.020.

1 (c) "Protective order" means any temporary or permanent court order
2 prohibiting or limiting violence against, harassment of, contact or
3 communication with, or physical proximity to another person.

4 (d) "Repeatedly" means on two or more separate occasions.

5 **Sec. 2.** RCW 9A.46.060 and 1992 c 186 s 4 and 1992 c 145 s 12 are
6 each reenacted and amended to read as follows:

7 As used in this chapter, "harassment" may include but is not
8 limited to any of the following crimes:

- 9 (1) Harassment (RCW 9A.46.020);
- 10 (2) Malicious harassment (RCW 9A.36.080);
- 11 (3) Telephone harassment (RCW 9.61.230);
- 12 (4) Assault in the first degree (RCW 9A.36.011);
- 13 (5) Assault of a child in the first degree (RCW 9A.36.120);
- 14 (6) Assault in the second degree (RCW 9A.36.021);
- 15 (7) Assault of a child in the second degree (RCW 9A.36.130);
- 16 (8) Assault in the fourth degree (RCW 9A.36.041);
- 17 (9) Reckless endangerment in the second degree (RCW 9A.36.050);
- 18 (10) Extortion in the first degree (RCW 9A.56.120);
- 19 (11) Extortion in the second degree (RCW 9A.56.130);
- 20 (12) Coercion (RCW 9A.36.070);
- 21 (13) Burglary in the first degree (RCW 9A.52.020);
- 22 (14) Burglary in the second degree (RCW 9A.52.030);
- 23 (15) Criminal trespass in the first degree (RCW 9A.52.070);
- 24 (16) Criminal trespass in the second degree (RCW 9A.52.080);
- 25 (17) Malicious mischief in the first degree (RCW 9A.48.070);
- 26 (18) Malicious mischief in the second degree (RCW 9A.48.080);
- 27 (19) Malicious mischief in the third degree (RCW 9A.48.090);
- 28 (20) Kidnapping in the first degree (RCW 9A.40.020);
- 29 (21) Kidnapping in the second degree (RCW 9A.40.030);
- 30 (22) Unlawful imprisonment (RCW 9A.40.040);
- 31 (23) Rape in the first degree (RCW 9A.44.040);
- 32 (24) Rape in the second degree (RCW 9A.44.050);
- 33 (25) Rape in the third degree (RCW 9A.44.060);
- 34 (26) Indecent liberties (RCW 9A.44.100);
- 35 (27) Rape of a child in the first degree (RCW 9A.44.073);
- 36 (28) Rape of a child in the second degree (RCW 9A.44.076);
- 37 (29) Rape of a child in the third degree (RCW 9A.44.079);
- 38 (30) Child molestation in the first degree (RCW 9A.44.083);

- 1 (31) Child molestation in the second degree (RCW 9A.44.086);
2 (32) Child molestation in the third degree (RCW 9A.44.089); ((and))
3 (33) Stalking (RCW 9A.46.110); and
4 (34) Violation of a temporary or permanent protective order issued
5 pursuant to chapter 9A.46, 10.14, 10.99, 26.09, or 26.50 RCW.

6 **Sec. 3.** RCW 13.40.020 and 1993 c 373 s 1 are each amended to read
7 as follows:

8 For the purposes of this chapter:

9 (1) "Serious offender" means a person fifteen years of age or older
10 who has committed an offense which if committed by an adult would be:

11 (a) A class A felony, or an attempt to commit a class A felony;

12 (b) Manslaughter in the first degree; or

13 (c) Assault in the second degree, extortion in the first degree,
14 child molestation in the second degree, kidnapping in the second
15 degree, robbery in the second degree, residential burglary, or burglary
16 in the second degree, where such offenses include the infliction of
17 bodily harm upon another or where during the commission of or immediate
18 withdrawal from such an offense the perpetrator is armed with a deadly
19 weapon or firearm as defined in RCW 9A.04.110;

20 (2) "Community service" means compulsory service, without
21 compensation, performed for the benefit of the community by the
22 offender as punishment for committing an offense. Community service
23 may be performed through public or private organizations or through
24 work crews;

25 (3) "Community supervision" means an order of disposition by the
26 court of an adjudicated youth not committed to the department. A
27 community supervision order for a single offense may be for a period of
28 up to two years for a sex offense as defined by RCW 9.94A.030 and up to
29 one year for other offenses. Community supervision is an
30 individualized program comprised of one or more of the following:

31 (a) Community-based sanctions;

32 (b) Community-based rehabilitation;

33 (c) Monitoring and reporting requirements;

34 (4) Community-based sanctions may include one or more of the
35 following:

36 (a) A fine, not to exceed one hundred dollars;

37 (b) Community service not to exceed one hundred fifty hours of
38 service;

1 (5) "Community-based rehabilitation" means one or more of the
2 following: Attendance of information classes; counseling, outpatient
3 substance abuse treatment programs, outpatient mental health programs,
4 anger management classes, or other services; or attendance at school or
5 other educational programs appropriate for the juvenile as determined
6 by the school district. Placement in community-based rehabilitation
7 programs is subject to available funds;

8 (6) "Monitoring and reporting requirements" means one or more of
9 the following: Curfews; requirements to remain at home, school, work,
10 or court-ordered treatment programs during specified hours;
11 restrictions from leaving or entering specified geographical areas;
12 requirements to report to the probation officer as directed and to
13 remain under the probation officer's supervision; and other conditions
14 or limitations as the court may require which may not include
15 confinement;

16 (7) "Confinement" means physical custody by the department of
17 social and health services in a facility operated by or pursuant to a
18 contract with the state, or physical custody in a detention facility
19 operated by or pursuant to a contract with any county. The county may
20 operate or contract with vendors to operate county detention
21 facilities. The department may operate or contract to operate
22 detention facilities for juveniles committed to the department.
23 Pretrial confinement or confinement of less than thirty-one days
24 imposed as part of a disposition or modification order may be served
25 consecutively or intermittently, in the discretion of the court and may
26 be served in a detention group home, detention foster home, or with
27 electronic monitoring. Detention group homes and detention foster
28 homes used for confinement shall not also be used for the placement of
29 dependent children. Confinement in detention group homes and detention
30 foster homes and electronic monitoring are subject to available funds;

31 (8) "Court", when used without further qualification, means the
32 juvenile court judge(s) or commissioner(s);

33 (9) "Criminal history" includes all criminal complaints against the
34 respondent for which, prior to the commission of a current offense:

35 (a) The allegations were found correct by a court. If a respondent
36 is convicted of two or more charges arising out of the same course of
37 conduct, only the highest charge from among these shall count as an
38 offense for the purposes of this chapter; or

1 (b) The criminal complaint was diverted by a prosecutor pursuant to
2 the provisions of this chapter on agreement of the respondent and after
3 an advisement to the respondent that the criminal complaint would be
4 considered as part of the respondent's criminal history;

5 (10) "Department" means the department of social and health
6 services;

7 (11) "Detention facility" means a county facility for the physical
8 confinement of a juvenile alleged to have committed an offense or an
9 adjudicated offender subject to a disposition or modification order;

10 (12) "Diversion unit" means any probation counselor who enters into
11 a diversion agreement with an alleged youthful offender, or any other
12 person or entity except a law enforcement official or entity, with whom
13 the juvenile court administrator has contracted to arrange and
14 supervise such agreements pursuant to RCW 13.40.080, or any person or
15 entity specially funded by the legislature to arrange and supervise
16 diversion agreements in accordance with the requirements of this
17 chapter;

18 (13) "Institution" means a juvenile facility established pursuant
19 to chapters 72.05 and 72.16 through 72.20 RCW;

20 (14) "Juvenile," "youth," and "child" mean any individual who is
21 under the chronological age of eighteen years and who has not been
22 previously transferred to adult court;

23 (15) "Juvenile offender" means any juvenile who has been found by
24 the juvenile court to have committed an offense, including a person
25 eighteen years of age or older over whom jurisdiction has been extended
26 under RCW 13.40.300;

27 (16) "Manifest injustice" means a disposition that would either
28 impose an excessive penalty on the juvenile or would impose a serious,
29 and clear danger to society in light of the purposes of this chapter;

30 (17) "Middle offender" means a person who has committed an offense
31 and who is neither a minor or first offender nor a serious offender;

32 (18) "Minor or first offender" means a person sixteen years of age
33 or younger whose current offense(s) and criminal history fall entirely
34 within one of the following categories:

35 (a) Four misdemeanors;

36 (b) Two misdemeanors and one gross misdemeanor;

37 (c) One misdemeanor and two gross misdemeanors;

38 (d) Three gross misdemeanors;

1 (e) One class C felony except: (i)(A) Manslaughter in the second
2 degree; or (B) felony stalking; and (ii) one misdemeanor or gross
3 misdemeanor;

4 (f) One class B felony except: Any felony which constitutes an
5 attempt to commit a class A felony; manslaughter in the first degree;
6 assault in the second degree; extortion in the first degree; indecent
7 liberties; kidnapping in the second degree; robbery in the second
8 degree; burglary in the second degree; residential burglary; vehicular
9 homicide; or arson in the second degree.

10 For purposes of this definition, current violations shall be
11 counted as misdemeanors;

12 (19) "Offense" means an act designated a violation or a crime if
13 committed by an adult under the law of this state, under any ordinance
14 of any city or county of this state, under any federal law, or under
15 the law of another state if the act occurred in that state;

16 (20) "Respondent" means a juvenile who is alleged or proven to have
17 committed an offense;

18 (21) "Restitution" means financial reimbursement by the offender to
19 the victim, and shall be limited to easily ascertainable damages for
20 injury to or loss of property, actual expenses incurred for medical
21 treatment for physical injury to persons, lost wages resulting from
22 physical injury, and costs of the victim's counseling reasonably
23 related to the offense if the offense is a sex offense. Restitution
24 shall not include reimbursement for damages for mental anguish, pain
25 and suffering, or other intangible losses. Nothing in this chapter
26 shall limit or replace civil remedies or defenses available to the
27 victim or offender;

28 (22) "Secretary" means the secretary of the department of social
29 and health services;

30 (23) "Services" mean services which provide alternatives to
31 incarceration for those juveniles who have pleaded or been adjudicated
32 guilty of an offense or have signed a diversion agreement pursuant to
33 this chapter;

34 (24) "Sex offense" means an offense defined as a sex offense in RCW
35 9.94A.030;

36 (25) "Sexual motivation" means that one of the purposes for which
37 the respondent committed the offense was for the purpose of his or her
38 sexual gratification;

1 (26) "Foster care" means temporary physical care in a foster family
2 home or group care facility as defined in RCW 74.15.020 and licensed by
3 the department, or other legally authorized care;

4 (27) "Violation" means an act or omission, which if committed by an
5 adult, must be proven beyond a reasonable doubt, and is punishable by
6 sanctions which do not include incarceration.

7 NEW SECTION. **Sec. 4.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected."

11 **EHB 2236** - S COMM AMD
12 By Committee on Law & Justice

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14 On page 1, line 1 of the title, after "stalking;" strike the
15 remainder of the title and insert "amending RCW 9A.46.110 and
16 13.40.020; and reenacting and amending RCW 9A.46.060."

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