

ESHB 2363 - S AMD 163

By Senators Hargrove, Stevens, Regala, Carrell

ADOPTED 02/29/2012

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

3 "Sec. 1. RCW 9A.46.040 and 2011 c 307 s 4 are each amended to read
4 as follows:

5 (1) Because of the likelihood of repeated harassment directed at
6 those who have been victims of harassment in the past, when any
7 defendant charged with a crime involving harassment is released from
8 custody before trial on bail or personal recognizance, the court
9 authorizing the release may require that the defendant:

10 (a) Stay away from the home, school, business, or place of
11 employment of the victim or victims of the alleged offense or other
12 location, as shall be specifically named by the court in the order;

13 (b) Refrain from contacting, intimidating, threatening, or
14 otherwise interfering with the victim or victims of the alleged offense
15 and such other persons, including but not limited to members of the
16 family or household of the victim, as shall be specifically named by
17 the court in the order.

18 (2) (~~An intentional~~) Willful violation of a court order issued
19 under this section or an equivalent local ordinance is a gross
20 misdemeanor. The written order releasing the defendant shall contain
21 the court's directives and shall bear the legend: Violation of this
22 order is a criminal offense under chapter 9A.46 RCW. A certified copy
23 of the order shall be provided to the victim by the clerk of the court.

24 **Sec. 2.** RCW 9A.46.080 and 2011 c 307 s 5 are each amended to read
25 as follows:

26 The victim shall be informed by local law enforcement agencies or
27 the prosecuting attorney of the final disposition of the case in which
28 the victim is involved. If a defendant is found guilty of a crime of
29 harassment and a condition of the sentence restricts the defendant's

1 ability to have contact with the victim or witnesses, the condition
2 shall be recorded and a written certified copy of that order shall be
3 provided to the victim or witnesses by the clerk of the court. Willful
4 violation of a court order issued under this section or an equivalent
5 local ordinance is a gross misdemeanor. The written order shall
6 contain the court's directives and shall bear the legend: Violation of
7 this order is a criminal offense under chapter 9A.46 RCW and will
8 subject a violator to arrest.

9 **Sec. 3.** RCW 10.99.040 and 2010 c 274 s 309 are each amended to
10 read as follows:

11 (1) Because of the serious nature of domestic violence, the court
12 in domestic violence actions:

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

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

17 (c) Shall waive any requirement that the victim's location be
18 disclosed to any person, other than the attorney of a criminal
19 defendant, upon a showing that there is a possibility of further
20 violence: PROVIDED, That the court may order a criminal defense
21 attorney not to disclose to his or her client the victim's location;
22 and

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

25 (2)(a) Because of the likelihood of repeated violence directed at
26 those who have been victims of domestic violence in the past, when any
27 person charged with or arrested for a crime involving domestic violence
28 is released from custody before arraignment or trial on bail or
29 personal recognizance, the court authorizing the release may prohibit
30 that person from having any contact with the victim. The jurisdiction
31 authorizing the release shall determine whether that person should be
32 prohibited from having any contact with the victim. If there is no
33 outstanding restraining or protective order prohibiting that person
34 from having contact with the victim, the court authorizing release may
35 issue, by telephone, a no-contact order prohibiting the person charged
36 or arrested from having contact with the victim or from knowingly

1 coming within, or knowingly remaining within, a specified distance of
2 a location.

3 (b) In issuing the order, the court shall consider the provisions
4 of RCW 9.41.800.

5 (c) The no-contact order shall also be issued in writing as soon as
6 possible, and shall state that it may be extended as provided in
7 subsection (3) of this section. By January 1, 2011, the administrative
8 office of the courts shall develop a pattern form for all no-contact
9 orders issued under this chapter. A no-contact order issued under this
10 chapter must substantially comply with the pattern form developed by
11 the administrative office of the courts.

12 (3) At the time of arraignment the court shall determine whether a
13 no-contact order shall be issued or extended. So long as the court
14 finds probable cause, the court may issue or extend a no-contact order
15 even if the defendant fails to appear at arraignment. The no-contact
16 order shall terminate if the defendant is acquitted or the charges are
17 dismissed. If a no-contact order is issued or extended, the court may
18 also include in the conditions of release a requirement that the
19 defendant submit to electronic monitoring. If electronic monitoring is
20 ordered, the court shall specify who shall provide the monitoring
21 services, and the terms under which the monitoring shall be performed.
22 Upon conviction, the court may require as a condition of the sentence
23 that the defendant reimburse the providing agency for the costs of the
24 electronic monitoring.

25 (4)(a) Willful violation of a court order issued under subsection
26 (2) ~~((or))~~, (3), or (7) of this section is punishable under RCW
27 26.50.110.

28 (b) The written order releasing the person charged or arrested
29 shall contain the court's directives and shall bear the legend:
30 "Violation of this order is a criminal offense under chapter 26.50 RCW
31 and will subject a violator to arrest; any assault, drive-by shooting,
32 or reckless endangerment that is a violation of this order is a felony.
33 You can be arrested even if any person protected by the order invites
34 or allows you to violate the order's prohibitions. You have the sole
35 responsibility to avoid or refrain from violating the order's
36 provisions. Only the court can change the order."

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

1 (5) If a no-contact order has been issued prior to charging, that
2 order shall expire at arraignment or within seventy-two hours if
3 charges are not filed. (~~Such orders need not be entered into the~~
4 ~~computer-based criminal intelligence information system in this state~~
5 ~~which is used by law enforcement agencies to list outstanding~~
6 ~~warrants.~~)

7 (6) Whenever a no-contact order is issued, modified, or terminated
8 under subsection (2) or (3) of this section, the clerk of the court
9 shall forward a copy of the order on or before the next judicial day to
10 the appropriate law enforcement agency specified in the order. Upon
11 receipt of the copy of the order the law enforcement agency shall enter
12 the order for one year or until the expiration date specified on the
13 order into any computer-based criminal intelligence information system
14 available in this state used by law enforcement agencies to list
15 outstanding warrants. Entry into the computer-based criminal
16 intelligence information system constitutes notice to all law
17 enforcement agencies of the existence of the order. The order is fully
18 enforceable in any jurisdiction in the state. Upon receipt of notice
19 that an order has been terminated under subsection (3) of this section,
20 the law enforcement agency shall remove the order from the computer-
21 based criminal intelligence information system.

22 (7) All courts shall develop policies and procedures by January 1,
23 2011, to grant victims a process to modify or rescind a no-contact
24 order issued under this chapter. The administrative office of the
25 courts shall develop a model policy to assist the courts in
26 implementing the requirements of this subsection.

27 NEW SECTION. **Sec. 4.** A new section is added to chapter 10.14 RCW
28 to read as follows:

29 (1) A defendant arrested for violating any civil antiharassment
30 protection order issued pursuant to this chapter is required to appear
31 in person before a magistrate within one judicial day after the arrest.
32 At the time of the appearance, the court shall determine the necessity
33 of imposing a no-contact order or other conditions of pretrial release
34 in accordance with RCW 9A.46.050.

35 (2) A defendant who is charged by citation, complaint, or
36 information with violating any civil antiharassment protection order

1 issued pursuant to this chapter and not arrested shall appear in court
2 for arraignment in accordance with RCW 9A.46.050.

3 (3) Appearances required pursuant to this section are mandatory and
4 cannot be waived.

5 **Sec. 5.** RCW 26.09.013 and 2007 c 496 s 401 are each amended to
6 read as follows:

7 In order to provide judicial officers with better information and
8 to facilitate decision making which allows for the protection of
9 children from physical, mental, or emotional harm and in order to
10 facilitate consistent healthy contact between both parents and their
11 children:

12 (1) Parties and witnesses who require the assistance of
13 interpreters shall be provided access to qualified interpreters
14 pursuant to chapter 2.42 or 2.43 RCW. To the extent practicable and
15 within available resources, interpreters shall also be made available
16 at dissolution-related proceedings.

17 (2) Parties and witnesses who require literacy assistance shall be
18 referred to the multipurpose service centers established in chapter
19 28B.04 RCW.

20 (3) In matters involving guardians ad litem(~~s~~), the court shall
21 specify the hourly rate the guardian ad litem may charge for his or her
22 services, and shall specify the maximum amount the guardian ad litem
23 may charge without additional review. Counties may, and to the extent
24 state funding is provided therefor counties shall, provide indigent
25 parties with guardian ad litem services at a reduced or waived fee.

26 (4) Parties may request to participate by telephone or interactive
27 videoconference. The court may allow telephonic or interactive
28 videoconference participation of one or more parties at any proceeding
29 in its discretion. The court may also allow telephonic or interactive
30 videoconference participation of witnesses.

31 (5) In cases involving domestic violence or child abuse, if
32 residential time is ordered, the court may:

33 (a) Order exchange of a child to occur in a protected setting;

34 (b) Order residential time supervised by a neutral and independent
35 adult and pursuant to an adequate plan for supervision of such
36 residential time. The court shall not approve of a supervisor for
37 contact between the child and the parent unless the supervisor is

1 willing to and capable of protecting the child from harm. The court
2 shall revoke court approval of the supervisor if the court determines,
3 after a hearing, that the supervisor has failed to protect the child or
4 is no longer willing or capable of protecting the child. If the court
5 allows a family or household member to supervise residential time, the
6 court shall establish conditions to be followed during residential
7 time.

8 (6)(a) In cases in which the court has made a finding of domestic
9 violence or child abuse, the court may not require a victim of domestic
10 violence or the custodial parent of a victim of child abuse to disclose
11 to the other party information that would reasonably be expected to
12 enable the perpetrator of domestic violence or child abuse to obtain
13 previously undisclosed information regarding the name, location, or
14 address of a victim's residence, employer, or school at an initial
15 hearing, and shall carefully weigh the safety interests of the victim
16 before issuing orders which would require disclosure in a future
17 hearing.

18 (b) In cases in which domestic violence or child abuse has been
19 alleged but the court has not yet made a finding regarding such
20 allegations, the court shall provide the party alleging domestic
21 violence or child abuse with the opportunity to prove the allegations
22 before ordering the disclosure of information that would reasonably be
23 expected to enable the alleged perpetrator of domestic violence or
24 child abuse to obtain previously undisclosed information regarding the
25 name, location, or address of a victim's residence, employer, or
26 school.

27 (7) In cases in which the court finds that the parties do not have
28 a satisfactory history of cooperation or there is a high level of
29 parental conflict, the court may order the parties to use supervised
30 visitation and safe exchange centers or alternative safe locations to
31 facilitate the exercise of residential time.

32 **Sec. 6.** RCW 43.235.040 and 2000 c 50 s 4 are each amended to read
33 as follows:

34 (1) An oral or written communication or a document shared within or
35 produced by a (~~regional~~) domestic violence fatality review panel
36 related to a domestic violence fatality review is confidential and not
37 subject to disclosure or discoverable by a third party. An oral or

1 written communication or a document provided by a third party to a
2 ((~~regional~~)) domestic violence fatality review panel, or between a
3 third party and a ((~~regional~~)) domestic violence fatality review panel
4 is confidential and not subject to disclosure or discovery by a third
5 party. Notwithstanding the foregoing, recommendations from the
6 ((~~regional~~)) domestic violence fatality review panel and the
7 coordinating entity generally may be disclosed minus personal
8 identifiers.

9 (2) The ((~~regional~~)) review panels, only to the extent otherwise
10 permitted by law or court rule, shall have access to information and
11 records regarding the domestic violence victims and perpetrators under
12 review held by domestic violence perpetrators' treatment providers;
13 dental care providers; hospitals, medical providers, and pathologists;
14 coroners and medical examiners; mental health providers; lawyers; the
15 state and local governments; the courts; and employers. The
16 coordinating entity and the ((~~regional~~)) review panels shall maintain
17 the confidentiality of such information to the extent required by any
18 applicable law.

19 (3) The ((~~regional~~)) review panels shall review, only to the extent
20 otherwise permitted by law or court rule when determined to be relevant
21 and necessary to an investigation, guardian ad litem reports, parenting
22 evaluations, and victim impact statements; probation information;
23 mental health evaluations done for court; presentence interviews and
24 reports, and any recommendations made regarding bail and release on own
25 recognizance; child protection services, welfare, and other information
26 held by the department; any law enforcement incident documentation,
27 such as incident reports, dispatch records, victim, witness, and
28 suspect statements, and any supplemental reports, probable cause
29 statements, and 911 call taker's reports; corrections and postsentence
30 supervision reports; and any other information determined to be
31 relevant to the review. The coordinating entity and the ((~~regional~~))
32 review panels shall maintain the confidentiality of such information to
33 the extent required by any applicable law.

34 **Sec. 7.** RCW 43.235.050 and 2000 c 50 s 5 are each amended to read
35 as follows:

36 If acting in good faith, without malice, and within the parameters
37 of this chapter and the protocols established, representatives of the

1 coordinating entity and the statewide and regional domestic violence
2 fatality review panels are immune from civil liability for an activity
3 related to reviews of particular fatalities.

4 NEW SECTION. **Sec. 8.** A new section is added to chapter 26.12 RCW
5 to read as follows:

6 The court shall act in accordance with the requirements of the
7 address confidentiality program pursuant to chapter 40.24 RCW in the
8 course of all proceedings under this title. A court order for
9 information protected by the address confidentiality program may only
10 be issued upon completing the requirements of RCW 40.24.075.

11 NEW SECTION. **Sec. 9.** A new section is added to chapter 26.50 RCW
12 to read as follows:

13 (1)(a) No court or administrative body may compel any person or
14 domestic violence program as defined in RCW 70.123.020 to disclose the
15 name, address, or location of any domestic violence program, including
16 a shelter or transitional housing facility location, in any civil or
17 criminal case or in any administrative proceeding unless the court
18 finds by clear and convincing evidence that disclosure is necessary for
19 the implementation of justice after consideration of safety and
20 confidentiality concerns of the parties and other residents of the
21 domestic violence program, and other alternatives to disclosure that
22 would protect the interests of the parties.

23 (b) The court's findings shall be made following a hearing in which
24 the domestic violence program has been provided notice of the request
25 for disclosure and an opportunity to respond.

26 (2) In any proceeding where the confidential name, address, or
27 location of a domestic violence program is ordered to be disclosed, the
28 court shall order that the parties be prohibited from further
29 dissemination of the confidential information, and that any portion of
30 any records containing such confidential information be sealed.

31 (3) Any person who obtains access to and intentionally and
32 maliciously releases confidential information about the location of a
33 domestic violence program for any purpose other than required by a
34 court proceeding is guilty of a gross misdemeanor.

1 NEW SECTION. **Sec. 10.** A new section is added to chapter 26.50 RCW
2 to read as follows:

3 (1) The Washington state institute for public policy shall conduct
4 a statewide study to assess recidivism by domestic violence offenders
5 involved in the criminal justice system, examine effective community
6 supervision practices of domestic violence offenders as it relates to
7 Washington state institute for public policy findings on evidence-based
8 community supervision, and assess domestic violence perpetrator
9 treatment. The institute shall report recidivism rates of domestic
10 violence offenders in Washington, and if data is available, the report
11 must also include an estimate of the number of domestic violence
12 offenders sentenced to certified domestic violence perpetrator
13 treatment in Washington state and completion rates for those entering
14 treatment.

15 (2) The study must be done in collaboration with the Washington
16 state gender and justice commission and experts on domestic violence
17 and must include a review and update of the literature on domestic
18 violence perpetrator treatment, and provide a description of studies
19 used in meta-analysis of domestic violence perpetrator treatment. The
20 institute shall report on other treatments and programs, including
21 related findings on evidence-based community supervision, that are
22 effective at reducing recidivism among the general offender population.
23 The institute shall survey other states to study how misdemeanor and
24 felony domestic violence cases are handled and assess whether domestic
25 violence perpetrator treatment is required by law and whether a
26 treatment modality is codified in law. The institute shall complete
27 the review and report results to the legislature by January 1, 2013.

28 NEW SECTION. **Sec. 11.** If specific funding for the purposes of
29 section 10 of this act, referencing section 10 of this act by bill or
30 chapter number and section number, is not provided by June 30, 2012, in
31 the omnibus appropriations act, section 10 of this act is null and
32 void."

ADOPTED 02/29/2012

1 On page 1, line 2 of the title, after "harassment;" strike the
2 remainder of the title and insert "amending RCW 9A.46.040, 9A.46.080,
3 10.99.040, 26.09.013, 43.235.040, and 43.235.050; adding a new section
4 to chapter 10.14 RCW; adding a new section to chapter 26.12 RCW; adding
5 new sections to chapter 26.50 RCW; creating a new section; and
6 prescribing penalties."

EFFECT: The restriction on court's authority in a dissolution proceeding to require disclosure of information that has previously been undisclosed that would reasonably be expected to enable an alleged perpetrator of domestic violence or child abuse to discover information related to the location of the alleged victim's residence, workplace, or school is limited to an initial hearing in cases in which the court has made a finding of domestic violence or child abuse. In future hearings, the court must carefully weigh the safety interests of the victim before issuing an order that would require such disclosures. In a case where domestic violence or child abuse has been alleged but the court has not yet made a finding, the court must provide the party alleging domestic violence or child abuse an opportunity to prove the allegations before ordering disclosure.

The civil infraction prohibiting release of confidential information relating to the location of a domestic violence program is eliminated; language making it a gross misdemeanor to release such information intentionally and maliciously is retained.

No court may compel a person to disclose the name, address, or location of a domestic violence program unless the court finds by clear and convincing evidence that disclosure is necessary for the implementation of justice after consideration of safety and confidentiality concerns of the parties and other residents of the domestic violence program, and other alternatives to disclosure that would protect the interests of the parties. The court's findings shall be made following a hearing in which the domestic violence program has been provided notice of the request for disclosure and an opportunity to respond.

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