
ENGROSSED SUBSTITUTE HOUSE BILL 2363

State of Washington

62nd Legislature

2012 Regular Session

By House Judiciary (originally sponsored by Representatives Goodman, Kenney, Orwall, Darneille, Ryu, Roberts, Appleton, Dickerson, Ladenburg, Reykdal, Jinkins, Santos, and Kagi)

READ FIRST TIME 01/31/12.

1 AN ACT Relating to protecting victims of domestic violence and
2 harassment; amending RCW 9A.46.040, 9A.46.080, 10.99.040, 26.09.013,
3 43.235.040, and 43.235.050; adding a new section to chapter 10.14 RCW;
4 adding a new section to chapter 26.12 RCW; adding new sections to
5 chapter 26.50 RCW; creating a new section; and prescribing penalties.

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

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

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

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

17 (b) Refrain from contacting, intimidating, threatening, or
18 otherwise interfering with the victim or victims of the alleged offense

1 and such other persons, including but not limited to members of the
2 family or household of the victim, as shall be specifically named by
3 the court in the order.

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

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

12 The victim shall be informed by local law enforcement agencies or
13 the prosecuting attorney of the final disposition of the case in which
14 the victim is involved. If a defendant is found guilty of a crime of
15 harassment and a condition of the sentence restricts the defendant's
16 ability to have contact with the victim or witnesses, the condition
17 shall be recorded and a written certified copy of that order shall be
18 provided to the victim or witnesses by the clerk of the court. Willful
19 violation of a court order issued under this section or an equivalent
20 local ordinance is a gross misdemeanor. The written order shall
21 contain the court's directives and shall bear the legend: Violation of
22 this order is a criminal offense under chapter 9A.46 RCW and will
23 subject a violator to arrest.

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

26 (1) Because of the serious nature of domestic violence, the court
27 in domestic violence actions:

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

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

32 (c) Shall waive any requirement that the victim's location be
33 disclosed to any person, other than the attorney of a criminal
34 defendant, upon a showing that there is a possibility of further
35 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)(a) 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 or from knowingly
17 coming within, or knowingly remaining within, a specified distance of
18 a location.

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

21 (c) The no-contact order shall also be issued in writing as soon as
22 possible. By January 1, 2011, the administrative office of the courts
23 shall develop a pattern form for all no-contact orders issued under
24 this chapter. A no-contact order issued under this chapter must
25 substantially comply with the pattern form developed by the
26 administrative office of the courts.

27 (3) At the time of arraignment the court shall determine whether a
28 no-contact order shall be issued or extended. So long as the court
29 finds probable cause, the court may issue or extend a no-contact order
30 even if the defendant fails to appear at arraignment. The no-contact
31 order shall terminate if the defendant is acquitted or the charges are
32 dismissed. If a no-contact order is issued or extended, the court may
33 also include in the conditions of release a requirement that the
34 defendant submit to electronic monitoring. If electronic monitoring is
35 ordered, the court shall specify who shall provide the monitoring
36 services, and the terms under which the monitoring shall be performed.
37 Upon conviction, the court may require as a condition of the sentence

1 that the defendant reimburse the providing agency for the costs of the
2 electronic monitoring.

3 (4)(a) Willful violation of a court order issued under subsection
4 (2) ~~((or))~~, (3), or (7) of this section is punishable under RCW
5 26.50.110.

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

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

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

22 (6) Whenever a no-contact order is issued, modified, or terminated
23 under subsection (2) or (3) of this section, the clerk of the court
24 shall forward a copy of the order on or before the next judicial day to
25 the appropriate law enforcement agency specified in the order. Upon
26 receipt of the copy of the order the law enforcement agency shall enter
27 the order for one year or until the expiration date specified on the
28 order into any computer-based criminal intelligence information system
29 available in this state used by law enforcement agencies to list
30 outstanding warrants. Entry into the computer-based criminal
31 intelligence information system constitutes notice to all law
32 enforcement agencies of the existence of the order. The order is fully
33 enforceable in any jurisdiction in the state. Upon receipt of notice
34 that an order has been terminated under subsection (3) of this section,
35 the law enforcement agency shall remove the order from the computer-
36 based criminal intelligence information system.

37 (7) All courts shall develop policies and procedures by January 1,
38 2011, to grant victims a process to modify or rescind a no-contact

1 order issued under this chapter. The administrative office of the
2 courts shall develop a model policy to assist the courts in
3 implementing the requirements of this subsection.

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

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

12 (2) A defendant who is charged by citation, complaint, or
13 information with violating any civil antiharassment protection order
14 issued pursuant to this chapter and not arrested shall appear in court
15 for arraignment in accordance with RCW 9A.46.050.

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

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

20 In order to provide judicial officers with better information and
21 to facilitate decision making which allows for the protection of
22 children from physical, mental, or emotional harm and in order to
23 facilitate consistent healthy contact between both parents and their
24 children:

25 (1) Parties and witnesses who require the assistance of
26 interpreters shall be provided access to qualified interpreters
27 pursuant to chapter 2.42 or 2.43 RCW. To the extent practicable and
28 within available resources, interpreters shall also be made available
29 at dissolution-related proceedings.

30 (2) Parties and witnesses who require literacy assistance shall be
31 referred to the multipurpose service centers established in chapter
32 28B.04 RCW.

33 (3) In matters involving guardians ad litem(~~s~~), the court shall
34 specify the hourly rate the guardian ad litem may charge for his or her
35 services, and shall specify the maximum amount the guardian ad litem

1 may charge without additional review. Counties may, and to the extent
2 state funding is provided therefor counties shall, provide indigent
3 parties with guardian ad litem services at a reduced or waived fee.

4 (4) Parties may request to participate by telephone or interactive
5 videoconference. The court may allow telephonic or interactive
6 videoconference participation of one or more parties at any proceeding
7 in its discretion. The court may also allow telephonic or interactive
8 videoconference participation of witnesses.

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

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

12 (b) Order residential time supervised by a neutral and independent
13 adult and pursuant to an adequate plan for supervision of such
14 residential time. The court shall not approve of a supervisor for
15 contact between the child and the parent unless the supervisor is
16 willing to and capable of protecting the child from harm. The court
17 shall revoke court approval of the supervisor if the court determines,
18 after a hearing, that the supervisor has failed to protect the child or
19 is no longer willing or capable of protecting the child. If the court
20 allows a family or household member to supervise residential time, the
21 court shall establish conditions to be followed during residential
22 time.

23 (6) In cases involving domestic violence or child abuse, the court
24 may not require a victim of domestic violence or the custodial parent
25 of a victim of child abuse to disclose to the other party information
26 that would reasonably be expected to enable the perpetrator of domestic
27 violence or child abuse to obtain previously undisclosed information
28 regarding the name, location, or address of a victim's residence,
29 employer, or school.

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

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

37 (1) An oral or written communication or a document shared within or

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

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

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

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

3 If acting in good faith, without malice, and within the parameters
4 of this chapter and the protocols established, representatives of the
5 coordinating entity and the statewide and regional domestic violence
6 fatality review panels are immune from civil liability for an activity
7 related to reviews of particular fatalities.

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

10 The court shall act in accordance with the requirements of the
11 address confidentiality program pursuant to chapter 40.24 RCW in the
12 course of all proceedings under this title. A court order for address
13 confidentiality program participant information may only be issued upon
14 completing the requirements of RCW 40.24.075.

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

17 (1) Except as otherwise provided in subsection (2) of this section,
18 no court or administrative body may compel any person or domestic
19 violence program as defined in RCW 70.123.020 to disclose the name,
20 address, or location of any domestic violence program, including a
21 shelter or transitional housing facility location in any civil or
22 criminal case or in any administrative proceeding.

23 (2)(a) A court may compel disclosure of the name, address, or
24 location of a domestic violence program only if the court finds,
25 following a hearing, that there is clear and convincing evidence that
26 failure to disclose would be likely to result in an imminent risk of
27 serious bodily harm or death to a domestic violence victim or another
28 person. In a proceeding where the domestic violence program is a party
29 to the proceeding, a court may compel disclosure of the name, address,
30 or location of a domestic violence program if the court finds that such
31 information is necessary and relevant to the facts of the case.

32 (b) A court may only compel the disclosure of the name, address, or
33 location of a domestic violence program following a written pretrial
34 motion made to a court stating that discovery is requested of the
35 information about the domestic violence program. The written motion
36 must be accompanied by an affidavit or affidavits setting forth

1 specifically the reasons why discovery is requested, and the court
2 shall review the domestic violence program's information in camera to
3 determine whether disclosure is permitted under (a) of this subsection.

4 (c) In any proceeding where the confidential name, address, or
5 location of a domestic violence program is ordered to be disclosed, the
6 court shall additionally order that the parties be prohibited from
7 further dissemination of the confidential information, and that any
8 portion of any records containing such confidential information be
9 sealed.

10 (3) Any person who obtains access to and releases confidential
11 information about the location of a domestic violence program for any
12 purpose other than required by a court proceeding is guilty of a civil
13 infraction carrying a maximum penalty and default amount of five
14 hundred dollars, unless such release is authorized by a court order or
15 is made with the written authorization of the person or persons
16 responsible for the operation of the domestic violence program. This
17 subsection does not apply to a current or former domestic violence
18 program participant.

19 (4) Any person who obtains access to and intentionally and
20 maliciously releases confidential information about the location of a
21 domestic violence program for any purpose other than required by a
22 court proceeding is guilty of a gross misdemeanor.

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

25 (1) The Washington state institute for public policy shall conduct
26 a statewide study to assess recidivism by domestic violence offenders
27 involved in the criminal justice system, examine effective community
28 supervision practices of domestic violence offenders as it relates to
29 Washington state institute for public policy findings on evidence-based
30 community supervision, and assess domestic violence perpetrator
31 treatment. The institute shall report recidivism rates of domestic
32 violence offenders in Washington, and if data is available, the report
33 must also include an estimate of the number of domestic violence
34 offenders sentenced to certified domestic violence perpetrator
35 treatment in Washington state and completion rates for those entering
36 treatment.

1 (2) The study must be done in collaboration with the Washington
2 state gender and justice commission and experts on domestic violence
3 and must include a review and update of the literature on domestic
4 violence perpetrator treatment, and provide a description of studies
5 used in meta-analysis of domestic violence perpetrator treatment. The
6 institute shall report on other treatments and programs, including
7 related findings on evidence-based community supervision, that are
8 effective at reducing recidivism among the general offender population.
9 The institute shall survey other states to study how misdemeanor and
10 felony domestic violence cases are handled and assess whether domestic
11 violence perpetrator treatment is required by law and whether a
12 treatment modality is codified in law. The institute shall complete
13 the review and report results to the legislature by January 1, 2013.

14 NEW SECTION. **Sec. 11.** If specific funding for the purposes of
15 section 10 of this act, referencing section 10 of this act by bill or
16 chapter number and section number, is not provided by June 30, 2012, in
17 the omnibus appropriations act, section 10 of this act is null and
18 void.

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