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**SUBSTITUTE HOUSE BILL 2363**

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**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 10.99 RCW; adding a new section to  
5 chapter 26.12 RCW; adding new sections to chapter 26.50 RCW; creating  
6 a new section; and prescribing penalties.

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

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

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

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

18       (b) Refrain from contacting, intimidating, threatening, or  
19 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 NEW SECTION. **Sec. 5.** A new section is added to chapter 10.99 RCW  
19 to read as follows:

20 (1) In cases where a no-contact order issued pursuant to RCW  
21 10.99.040 or 10.99.050 has been terminated, if the court finds that  
22 there has been a substantial change in circumstances that warrants the  
23 protection of a no-contact order, the court may reissue the no-contact  
24 order. In determining whether there has been a substantial change in  
25 circumstances, the court's findings must be based in part on an  
26 affidavit made under oath by a person with reason to believe that the  
27 protection of a no-contact order is necessary, which includes, but is  
28 not limited to, a victim, prosecutor, domestic violence advocate, or  
29 law enforcement officer. If the petitioner is someone other than the  
30 victim, the petitioner shall make all reasonable attempts to notify the  
31 victim of the intent to seek a no-contact order. In accordance with  
32 RCW 26.50.110, the defendant is not subject to penalties for violations  
33 of the no-contact order unless the defendant knows of the order.

34 (2)(a) Where irreparable injury could result from domestic violence  
35 if a no-contact order under subsection (1) of this section is not

1 issued immediately without prior notice to the defendant, the court may  
2 issue a no-contact order on an ex parte temporary basis, pending a full  
3 hearing, and grant relief as the court deems proper.

4 (b) Irreparable injury under this section includes, but is not  
5 limited to, situations in which the defendant has recently threatened  
6 a person with bodily injury or has engaged in acts of domestic  
7 violence.

8 (c) The court shall hold an ex parte hearing in person or by  
9 telephone on the day the petition is filed or on the following judicial  
10 day.

11 (d) An ex parte temporary no-contact order is effective for a fixed  
12 period not to exceed fourteen days or twenty-four days if the court has  
13 permitted service by publication or by mail. The ex parte temporary  
14 no-contact order may be reissued. A full hearing must be set for not  
15 later than fourteen days from the issuance of the temporary order or  
16 not later than twenty-four days if service by publication or by mail is  
17 permitted. Except when service by publication or by mail is permitted,  
18 the defendant must be personally served with a copy of the ex parte  
19 temporary no-contact order along with a notice of the date set for the  
20 hearing.

21 (e) Any order issued under this section must contain the date and  
22 time of issuance and the expiration date and must be entered into a  
23 statewide judicial information system by the clerk of the court within  
24 one judicial day after issuance.

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

27 In order to provide judicial officers with better information and  
28 to facilitate decision making which allows for the protection of  
29 children from physical, mental, or emotional harm and in order to  
30 facilitate consistent healthy contact between both parents and their  
31 children:

32 (1) Parties and witnesses who require the assistance of  
33 interpreters shall be provided access to qualified interpreters  
34 pursuant to chapter 2.42 or 2.43 RCW. To the extent practicable and  
35 within available resources, interpreters shall also be made available  
36 at dissolution-related proceedings.

1 (2) Parties and witnesses who require literacy assistance shall be  
2 referred to the multipurpose service centers established in chapter  
3 28B.04 RCW.

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

10 (4) Parties may request to participate by telephone or interactive  
11 videoconference. The court may allow telephonic or interactive  
12 videoconference participation of one or more parties at any proceeding  
13 in its discretion. The court may also allow telephonic or interactive  
14 videoconference participation of witnesses.

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

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

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

29 (6) In cases involving domestic violence or child abuse, the court  
30 may not require a victim of domestic violence or the custodial parent  
31 of a victim of child abuse to disclose information that would  
32 reasonably be expected to enable the perpetrator of domestic violence  
33 or child abuse to obtain confidential information regarding the name,  
34 location, or address of a victim's residence, employer, or school.

35 (7) In cases in which the court finds that the parties do not have  
36 a satisfactory history of cooperation or there is a high level of  
37 parental conflict, the court may order the parties to use supervised

1 visitation and safe exchange centers or alternative safe locations to  
2 facilitate the exercise of residential time.

3 **Sec. 7.** RCW 43.235.040 and 2000 c 50 s 4 are each amended to read  
4 as follows:

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

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

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



1 supervision reports; and any other information determined to be  
2 relevant to the review. The coordinating entity and the (~~regional~~)  
3 review panels shall maintain the confidentiality of such information to  
4 the extent required by any applicable law.

5 **Sec. 8.** RCW 43.235.050 and 2000 c 50 s 5 are each amended to read  
6 as follows:

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

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

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

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

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

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

1 (b) A court may only compel the disclosure of the name, address, or  
2 location of a domestic violence program following a written pretrial  
3 motion made to a court stating that discovery is requested of the  
4 information about the domestic violence program. The written motion  
5 must be accompanied by an affidavit or affidavits setting forth  
6 specifically the reasons why discovery is requested, and the court  
7 shall review the domestic violence program's information in camera to  
8 determine whether disclosure is permitted under (a) of this subsection.

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

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

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

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

30 (1) The Washington state institute for public policy shall conduct  
31 a statewide study to assess recidivism by domestic violence offenders  
32 involved in the criminal justice system, examine effective community  
33 supervision practices of domestic violence offenders as it relates to  
34 Washington state institute for public policy findings on evidence-based  
35 community supervision, and assess domestic violence perpetrator  
36 treatment. The institute shall report recidivism rates of domestic  
37 violence offenders in Washington, and if data is available, the report

1 must also include an estimate of the number of domestic violence  
2 offenders sentenced to certified domestic violence perpetrator  
3 treatment in Washington state and completion rates for those entering  
4 treatment.

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

18 NEW SECTION. **Sec. 12.** If specific funding for the purposes of  
19 section 11 of this act, referencing section 11 of this act by bill or  
20 chapter number and section number, is not provided by June 30, 2012, in  
21 the omnibus appropriations act, section 11 of this act is null and  
22 void.

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