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**SENATE BILL 5076**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senators L. Wilson, Padden, Braun, Dozier, Fortunato, Kuderer, Torres, and Warnick

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1 AN ACT Relating to the authority to hold a person without bail  
2 until their first appearance on a domestic violence or protection  
3 order case; and amending RCW 10.31.100 and 7.105.450.

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

5 **Sec. 1.** RCW 10.31.100 and 2021 c 215 s 118 are each amended to  
6 read as follows:

7 A police officer having probable cause to believe that a person  
8 has committed or is committing a felony shall have the authority to  
9 arrest the person without a warrant. A police officer may arrest a  
10 person without a warrant for committing a misdemeanor or gross  
11 misdemeanor only when the offense is committed in the presence of an  
12 officer, except as provided in subsections (1) through (~~(11)~~) (12)  
13 of this section.

14 (1) Any police officer having probable cause to believe that a  
15 person has committed or is committing a misdemeanor or gross  
16 misdemeanor, involving physical harm or threats of harm to any person  
17 or property or the unlawful taking of property or involving the use  
18 or possession of cannabis, or involving the acquisition, possession,  
19 or consumption of alcohol by a person under the age of twenty-one  
20 years under RCW 66.44.270, or involving criminal trespass under RCW

1 9A.52.070 or 9A.52.080, shall have the authority to arrest the  
2 person.

3 (2) ((A)) Except as provided in subsection (3) of this section, a  
4 police officer shall arrest and ((take into)) keep in custody,  
5 ((pending release)) until release by a judicial officer on bail,  
6 personal recognizance, or court order, a person without a warrant  
7 when the officer has probable cause to believe that:

8 (a) A domestic violence protection order, a sexual assault  
9 protection order, a stalking protection order, or a vulnerable adult  
10 protection order has been issued, of which the person has knowledge,  
11 under chapter 7.105 RCW, or an order has been issued, of which the  
12 person has knowledge, under RCW 26.44.063, or chapter 9A.40, 9A.46,  
13 9A.88, 10.99, 26.09, 26.10, 26.26A, 26.26B, or 74.34 RCW, or any of  
14 the former chapters 7.90, 7.92, and 26.50 RCW, restraining the person  
15 and the person has violated the terms of the order restraining the  
16 person from acts or threats of violence, or restraining the person  
17 from going onto the grounds of, or entering, a residence, workplace,  
18 school, or day care, or prohibiting the person from knowingly coming  
19 within, or knowingly remaining within, a specified distance of a  
20 location, a protected party's person, or a protected party's vehicle,  
21 or, in the case of an order issued under RCW 26.44.063, imposing any  
22 other restrictions or conditions upon the person;

23 (b) An extreme risk protection order has been issued against the  
24 person under chapter 7.105 RCW or former RCW 7.94.040, the person has  
25 knowledge of the order, and the person has violated the terms of the  
26 order prohibiting the person from having in his or her custody or  
27 control, purchasing, possessing, accessing, or receiving a firearm or  
28 concealed pistol license;

29 (c) A foreign protection order, as defined in RCW 26.52.010, or a  
30 Canadian domestic violence protection order, as defined in RCW  
31 26.55.010, has been issued of which the person under restraint has  
32 knowledge and the person under restraint has violated a provision of  
33 the foreign protection order or the Canadian domestic violence  
34 protection order prohibiting the person under restraint from  
35 contacting or communicating with another person, or excluding the  
36 person under restraint from a residence, workplace, school, or day  
37 care, or prohibiting the person from knowingly coming within, or  
38 knowingly remaining within, a specified distance of a location, a  
39 protected party's person, or a protected party's vehicle, or a  
40 violation of any provision for which the foreign protection order or

1 the Canadian domestic violence protection order specifically  
2 indicates that a violation will be a crime; or

3 (d) The person is eighteen years or older and within the  
4 preceding four hours has assaulted a family or household member or  
5 intimate partner as defined in RCW 10.99.020 and the officer  
6 believes: (i) A felonious assault has occurred; (ii) an assault has  
7 occurred which has resulted in bodily injury to the victim, whether  
8 the injury is observable by the responding officer or not; or (iii)  
9 that any physical action has occurred which was intended to cause  
10 another person reasonably to fear imminent serious bodily injury or  
11 death. Bodily injury means physical pain, illness, or an impairment  
12 of physical condition. When the officer has probable cause to believe  
13 that family or household members or intimate partners have assaulted  
14 each other, the officer is not required to arrest both persons. The  
15 officer shall arrest the person whom the officer believes to be the  
16 primary physical aggressor. In making this determination, the officer  
17 shall make every reasonable effort to consider: (A) The intent to  
18 protect victims of domestic violence under RCW 10.99.010; (B) the  
19 comparative extent of injuries inflicted or serious threats creating  
20 fear of physical injury; and (C) the history of domestic violence of  
21 each person involved, including whether the conduct was part of an  
22 ongoing pattern of abuse.

23 (3) A police officer is not required to keep in custody a person  
24 under subsection (2)(a) of this section if the person requires  
25 immediate medical attention and is admitted to a hospital.

26 (4) Any police officer having probable cause to believe that a  
27 person has committed or is committing a violation of any of the  
28 following traffic laws shall have the authority to arrest the person:

29 (a) RCW 46.52.010, relating to duty on striking an unattended car  
30 or other property;

31 (b) RCW 46.52.020, relating to duty in case of injury to, or  
32 death of, a person or damage to an attended vehicle;

33 (c) RCW 46.61.500 or 46.61.530, relating to reckless driving or  
34 racing of vehicles;

35 (d) RCW 46.61.502 or 46.61.504, relating to persons under the  
36 influence of intoxicating liquor or drugs;

37 (e) RCW 46.61.503 or 46.25.110, relating to persons having  
38 alcohol or THC in their system;

39 (f) RCW 46.20.342, relating to driving a motor vehicle while  
40 operator's license is suspended or revoked;

1 (g) RCW 46.61.5249, relating to operating a motor vehicle in a  
2 negligent manner.

3 (~~(4)~~) (5) A law enforcement officer investigating at the scene  
4 of a motor vehicle accident may arrest the driver of a motor vehicle  
5 involved in the accident if the officer has probable cause to believe  
6 that the driver has committed, in connection with the accident, a  
7 violation of any traffic law or regulation.

8 (~~(5)~~) (6)(a) A law enforcement officer investigating at the  
9 scene of a motor vessel accident may arrest the operator of a motor  
10 vessel involved in the accident if the officer has probable cause to  
11 believe that the operator has committed, in connection with the  
12 accident, a criminal violation of chapter 79A.60 RCW.

13 (b) A law enforcement officer investigating at the scene of a  
14 motor vessel accident may issue a citation for an infraction to the  
15 operator of a motor vessel involved in the accident if the officer  
16 has probable cause to believe that the operator has committed, in  
17 connection with the accident, a violation of any boating safety law  
18 of chapter 79A.60 RCW.

19 (~~(6)~~) (7) Any police officer having probable cause to believe  
20 that a person has committed or is committing a violation of RCW  
21 79A.60.040 shall have the authority to arrest the person.

22 (~~(7)~~) (8) An officer may act upon the request of a law  
23 enforcement officer, in whose presence a traffic infraction was  
24 committed, to stop, detain, arrest, or issue a notice of traffic  
25 infraction to the driver who is believed to have committed the  
26 infraction. The request by the witnessing officer shall give an  
27 officer the authority to take appropriate action under the laws of  
28 the state of Washington.

29 (~~(8)~~) (9) Any police officer having probable cause to believe  
30 that a person has committed or is committing any act of indecent  
31 exposure, as defined in RCW 9A.88.010, may arrest the person.

32 (~~(9)~~) (10) A police officer may arrest and take into custody,  
33 pending release on bail, personal recognizance, or court order, a  
34 person without a warrant when the officer has probable cause to  
35 believe that an antiharassment protection order has been issued of  
36 which the person has knowledge under chapter 7.105 RCW or former  
37 chapter 10.14 RCW and the person has violated the terms of that  
38 order.

1       ~~((10))~~ (11) Any police officer having probable cause to believe  
2 that a person has, within twenty-four hours of the alleged violation,  
3 committed a violation of RCW 9A.50.020 may arrest such person.

4       ~~((11))~~ (12) A police officer having probable cause to believe  
5 that a person illegally possesses or illegally has possessed a  
6 firearm or other dangerous weapon on private or public elementary or  
7 secondary school premises shall have the authority to arrest the  
8 person.

9       For purposes of this subsection, the term "firearm" has the  
10 meaning defined in RCW 9.41.010 and the term "dangerous weapon" has  
11 the meaning defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

12       ~~((12))~~ (13) A law enforcement officer having probable cause to  
13 believe that a person has committed a violation under RCW  
14 77.15.160(5) may issue a citation for an infraction to the person in  
15 connection with the violation.

16       ~~((13))~~ (14) A law enforcement officer having probable cause to  
17 believe that a person has committed a criminal violation under RCW  
18 77.15.809 or 77.15.811 may arrest the person in connection with the  
19 violation.

20       ~~((14))~~ (15) Except as specifically provided in subsections (2),  
21 ~~((3))~~ (4), ~~((4))~~ (5), and ~~((7))~~ (8) of this section, nothing in  
22 this section extends or otherwise affects the powers of arrest  
23 prescribed in Title 46 RCW.

24       ~~((15))~~ (16) No police officer may be held criminally or civilly  
25 liable for making an arrest pursuant to subsection (2) or ~~((9))~~  
26 (10) of this section if the police officer acts in good faith and  
27 without malice.

28       ~~((16))~~ (17)(a) Except as provided in (b) of this subsection, a  
29 police officer shall arrest and keep in custody, until release by a  
30 judicial officer on bail, personal recognizance, or court order, a  
31 person without a warrant when the officer has probable cause to  
32 believe that the person has violated RCW 46.61.502 or 46.61.504 or an  
33 equivalent local ordinance and the police officer: (i) Has knowledge  
34 that the person has a prior offense as defined in RCW 46.61.5055  
35 within ten years; or (ii) has knowledge, based on a review of the  
36 information available to the officer at the time of arrest, that the  
37 person is charged with or is awaiting arraignment for an offense that  
38 would qualify as a prior offense as defined in RCW 46.61.5055 if it  
39 were a conviction.

1 (b) A police officer is not required to keep in custody a person  
2 under (a) of this subsection if the person requires immediate medical  
3 attention and is admitted to a hospital.

4 **Sec. 2.** RCW 7.105.450 and 2022 c 268 s 21 are each amended to  
5 read as follows:

6 (1)(a) Whenever a domestic violence protection order, a sexual  
7 assault protection order, a stalking protection order, or a  
8 vulnerable adult protection order is granted under this chapter, or  
9 an order is granted under chapter 9A.40, 9A.44, 9A.46, 9A.88, 9.94A,  
10 10.99, 26.09, 26.26A, or 26.26B RCW, or there is a valid foreign  
11 protection order as defined in RCW 26.52.020, or there is a Canadian  
12 domestic violence protection order as defined in RCW 26.55.010, and  
13 the respondent or person to be restrained knows of the order, a  
14 violation of any of the following provisions of the order is a gross  
15 misdemeanor, except as provided in subsections (4) and (5) of this  
16 section:

17 (i) The restraint provisions prohibiting acts or threats of  
18 violence against, or stalking of, a protected party, or the restraint  
19 provisions prohibiting contact with a protected party;

20 (ii) A provision excluding the person from a residence,  
21 workplace, school, or day care;

22 (iii) A provision prohibiting the person from knowingly coming  
23 within, or knowingly remaining within, a specified distance of a  
24 location, a protected party's person, or a protected party's vehicle;

25 (iv) A provision prohibiting interfering with the protected  
26 party's efforts to remove a pet owned, possessed, leased, kept, or  
27 held by the petitioner, the respondent, or a minor child residing  
28 with either the petitioner or the respondent; or

29 (v) A provision of a foreign protection order or a Canadian  
30 domestic violence protection order specifically indicating that a  
31 violation will be a crime.

32 (b) Upon conviction, and in addition to any other penalties  
33 provided by law, the court:

34 (i) May require that the respondent submit to electronic  
35 monitoring. The court shall specify who must provide the electronic  
36 monitoring services and the terms under which the monitoring must be  
37 performed. The order also may include a requirement that the  
38 respondent pay the costs of the monitoring. The court shall consider

1 the ability of the convicted person to pay for electronic monitoring;  
2 and

3 (ii) Shall impose a fine of \$15, in addition to any penalty or  
4 fine imposed, for a violation of a domestic violence protection order  
5 issued under this chapter. Revenue from the \$15 fine must be remitted  
6 monthly to the state treasury for deposit in the domestic violence  
7 prevention account.

8 (2) A law enforcement officer shall arrest without a warrant and  
9 ~~((take into))~~ keep in custody until release by a judicial officer on  
10 bail, personal recognizance, or court order, a person whom the law  
11 enforcement officer has probable cause to believe has violated a  
12 domestic violence protection order, a sexual assault protection  
13 order, a stalking protection order, or a vulnerable adult protection  
14 order, or an order issued under chapter 9A.40, 9A.44, 9A.46, 9A.88,  
15 9.94A, 10.99, 26.09, 26.26A, or 26.26B RCW, or a valid foreign  
16 protection order as defined in RCW 26.52.020, or a Canadian domestic  
17 violence protection order as defined in RCW 26.55.010, that restrains  
18 the person or excludes the person from a residence, workplace,  
19 school, or day care, or prohibits the person from knowingly coming  
20 within, or knowingly remaining within, a specified distance of a  
21 location, a protected party's person, or a protected party's vehicle,  
22 if the person restrained knows of the order. Presence of the order in  
23 the law enforcement computer-based criminal intelligence information  
24 system is not the only means of establishing knowledge of the order.  
25 A law enforcement officer is not required to keep in custody a person  
26 under this subsection if the person requires immediate medical  
27 attention and is admitted to a hospital.

28 (3) A violation of a domestic violence protection order, a sexual  
29 assault protection order, a stalking protection order, or a  
30 vulnerable adult protection order, or an order issued under chapter  
31 9A.40, 9A.44, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.26A, or 26.26B  
32 RCW, or a valid foreign protection order as defined in RCW 26.52.020,  
33 or a Canadian domestic violence protection order as defined in RCW  
34 26.55.010, shall also constitute contempt of court, and is subject to  
35 the penalties prescribed by law.

36 (4) Any assault that is a violation of a domestic violence  
37 protection order, a sexual assault protection order, a stalking  
38 protection order, or a vulnerable adult protection order, or an order  
39 issued under chapter 9A.40, 9A.44, 9A.46, 9A.88, 9.94A, 10.99, 26.09,  
40 26.26A, or 26.26B RCW, or a valid foreign protection order as defined

1 in RCW 26.52.020, or a Canadian domestic violence protection order as  
2 defined in RCW 26.55.010, and that does not amount to assault in the  
3 first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C  
4 felony, and any conduct in violation of such an order that is  
5 reckless and creates a substantial risk of death or serious physical  
6 injury to another person is a class C felony.

7 (5) A violation of a domestic violence protection order, a sexual  
8 assault protection order, a stalking protection order, or a  
9 vulnerable adult protection order, or a court order issued under  
10 chapter 9A.40, 9A.44, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.26A, or  
11 26.26B RCW, or a valid foreign protection order as defined in RCW  
12 26.52.020, or a Canadian domestic violence protection order as  
13 defined in RCW 26.55.010, is a class C felony if the offender has at  
14 least two previous convictions for violating the provisions of a  
15 domestic violence protection order, a sexual assault protection  
16 order, a stalking protection order, or a vulnerable adult protection  
17 order, or an order issued under chapter 9A.40, 9A.44, 9A.46, 9A.88,  
18 9.94A, 10.99, 26.09, 26.26A, or 26.26B RCW, or a valid foreign  
19 protection order as defined in RCW 26.52.020, or a Canadian domestic  
20 violence protection order as defined in RCW 26.55.010. The previous  
21 convictions may involve the same victim or other victims specifically  
22 protected by the orders the offender violated.

23 (6) (a) A defendant arrested for violating a domestic violence  
24 protection order, sexual assault protection order, stalking  
25 protection order, or vulnerable adult protection order, or an order  
26 granted under chapter 9A.40, 9A.44, 9A.46, 9A.88, 9.94A, 10.99,  
27 26.09, 26.26A, or 26.26B RCW, or a valid foreign protection order as  
28 defined in RCW 26.52.020, or a Canadian domestic violence protection  
29 order as defined in RCW 26.55.010, is required to appear in person  
30 before a magistrate within one judicial day after the arrest. At the  
31 time of the appearance, the court shall determine the necessity of  
32 imposing a no-contact order or other conditions of pretrial release.

33 (b) A defendant who is charged by citation, complaint, or  
34 information with violating any protection order identified in (a) of  
35 this subsection and not arrested shall appear in court for  
36 arraignment in person as soon as practicable, but in no event later  
37 than 14 days after the next day on which court is in session  
38 following the issuance of the citation or the filing of the complaint  
39 or information.

1           (7) Upon the filing of an affidavit by the petitioner or any law  
2 enforcement officer alleging that the respondent has violated a  
3 domestic violence protection order, a sexual assault protection  
4 order, a stalking protection order, or a vulnerable adult protection  
5 order, or an order granted under chapter 9A.40, 9A.44, 9A.46, 9A.88,  
6 9.94A, 10.99, 26.09, 26.26A, or 26.26B RCW, or a valid foreign  
7 protection order as defined in RCW 26.52.020, or a Canadian domestic  
8 violence protection order as defined in RCW 26.55.010, the court may  
9 issue an order to the respondent, requiring the respondent to appear  
10 and show cause within 14 days as to why the respondent should not be  
11 found in contempt of court and punished accordingly. The hearing may  
12 be held in the court of any county or municipality in which the  
13 petitioner or respondent temporarily or permanently resides at the  
14 time of the alleged violation.

15           (8) Appearances required under this section are mandatory and  
16 cannot be waived.

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