

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2363

62nd Legislature
2012 Regular Session

Passed by the House March 3, 2012
Yeas 96 Nays 0

Speaker of the House of Representatives

Passed by the Senate February 29, 2012
Yeas 48 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2363** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2363

AS AMENDED BY THE SENATE

Passed Legislature - 2012 Regular Session

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, and shall state that it may be extended as provided in
23 subsection (3) of this section. By January 1, 2011, the administrative
24 office of the courts shall develop a pattern form for all no-contact
25 orders issued under this chapter. A no-contact order issued under this
26 chapter must substantially comply with the pattern form developed by
27 the administrative office of the courts.

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

1 Upon conviction, the court may require as a condition of the sentence
2 that the defendant reimburse the providing agency for the costs of the
3 electronic monitoring.

4 (4)(a) Willful violation of a court order issued under subsection
5 (2) ~~((or))~~, (3), or (7) of this section is punishable under RCW
6 26.50.110.

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

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

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

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

1 (7) All courts shall develop policies and procedures by January 1,
2 2011, to grant victims a process to modify or rescind a no-contact
3 order issued under this chapter. The administrative office of the
4 courts shall develop a model policy to assist the courts in
5 implementing the requirements of this subsection.

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

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

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

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

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

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

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

32 (2) Parties and witnesses who require literacy assistance shall be
33 referred to the multipurpose service centers established in chapter
34 28B.04 RCW.

35 (3) In matters involving guardians ad litem(~~s~~), the court shall
36 specify the hourly rate the guardian ad litem may charge for his or her

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

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

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

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

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

24 (6)(a) In cases in which the court has made a finding of domestic
25 violence or child abuse, the court may not require a victim of domestic
26 violence or the custodial parent of a victim of child abuse to disclose
27 to the other party information that would reasonably be expected to
28 enable the perpetrator of domestic violence or child abuse to obtain
29 previously undisclosed information regarding the name, location, or
30 address of a victim's residence, employer, or school at an initial
31 hearing, and shall carefully weigh the safety interests of the victim
32 before issuing orders which would require disclosure in a future
33 hearing.

34 (b) In cases in which domestic violence or child abuse has been
35 alleged but the court has not yet made a finding regarding such
36 allegations, the court shall provide the party alleging domestic
37 violence or child abuse with the opportunity to prove the allegations
38 before ordering the disclosure of information that would reasonably be

1 expected to enable the alleged perpetrator of domestic violence or
2 child abuse to obtain previously undisclosed information regarding the
3 name, location, or address of a victim's residence, employer, or
4 school.

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

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

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

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

34 (3) The ((~~regional~~)) review panels shall review, only to the extent
35 otherwise permitted by law or court rule when determined to be relevant
36 and necessary to an investigation, guardian ad litem reports, parenting
37 evaluations, and victim impact statements; probation information;

1 mental health evaluations done for court; presentence interviews and
2 reports, and any recommendations made regarding bail and release on own
3 recognizance; child protection services, welfare, and other information
4 held by the department; any law enforcement incident documentation,
5 such as incident reports, dispatch records, victim, witness, and
6 suspect statements, and any supplemental reports, probable cause
7 statements, and 911 call taker's reports; corrections and postsentence
8 supervision reports; and any other information determined to be
9 relevant to the review. The coordinating entity and the (~~regional~~)
10 review panels shall maintain the confidentiality of such information to
11 the extent required by any applicable law.

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

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

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

21 The court shall act in accordance with the requirements of the
22 address confidentiality program pursuant to chapter 40.24 RCW in the
23 course of all proceedings under this title. A court order for
24 information protected by the address confidentiality program may only
25 be issued upon completing the requirements of RCW 40.24.075.

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

28 (1)(a) No court or administrative body may compel any person or
29 domestic violence program as defined in RCW 70.123.020 to disclose the
30 name, address, or location of any domestic violence program, including
31 a shelter or transitional housing facility location, in any civil or
32 criminal case or in any administrative proceeding unless the court
33 finds by clear and convincing evidence that disclosure is necessary for
34 the implementation of justice after consideration of safety and

1 confidentiality concerns of the parties and other residents of the
2 domestic violence program, and other alternatives to disclosure that
3 would protect the interests of the parties.

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

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

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

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

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

30 (2) The study must be done in collaboration with the Washington
31 state gender and justice commission and experts on domestic violence
32 and must include a review and update of the literature on domestic
33 violence perpetrator treatment, and provide a description of studies
34 used in meta-analysis of domestic violence perpetrator treatment. The
35 institute shall report on other treatments and programs, including
36 related findings on evidence-based community supervision, that are
37 effective at reducing recidivism among the general offender population.

1 The institute shall survey other states to study how misdemeanor and
2 felony domestic violence cases are handled and assess whether domestic
3 violence perpetrator treatment is required by law and whether a
4 treatment modality is codified in law. The institute shall complete
5 the review and report results to the legislature by January 1, 2013.

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

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