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HOUSE BILL 2952

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State of Washington

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By Representatives Sheahan, Campbell, McMorris, Sterk, Sheldon, Hargrove, Schoesler, Foreman, Thompson, Hymes, Goldsmith, Pennington, L. Thomas, Smith, Backlund, Silver, Johnson, Carrell, Robertson, Blanton, Pelesky, Sherstad and Mulliken

Read first time 2-10-96.

1 AN ACT Relating to increasing penalties for crimes against family  
2 or household members; amending RCW 9A.36.050, 9A.36.070, 9A.46.110,  
3 9A.52.070, 9A.48.090, 26.09.300, and 26.50.110; and prescribing  
4 penalties.

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

6 **Sec. 1.** RCW 9A.36.050 and 1989 c 271 s 110 are each amended to  
7 read as follows:

8 (1) A person is guilty of reckless endangerment in the second  
9 degree when he recklessly engages in conduct not amounting to reckless  
10 endangerment in the first degree but which creates a substantial risk  
11 of death or serious physical injury to another person.

12 (2) Reckless endangerment in the second degree is a gross  
13 misdemeanor unless the person commits the crime against a family or  
14 household member as defined in RCW 10.99.020, in which case it is a  
15 class C felony.

16 **Sec. 2.** RCW 9A.36.070 and 1975 1st ex.s. c 260 s 9A.36.070 are  
17 each amended to read as follows:

1 (1) A person is guilty of coercion if by use of a threat he compels  
2 or induces a person to engage in conduct which the latter has a legal  
3 right to abstain from, or to abstain from conduct which he has a legal  
4 right to engage in.

5 (2) "Threat" as used in this section means:

6 (a) To communicate, directly or indirectly, the intent immediately  
7 to use force against any person who is present at the time; or

8 (b) Threats as defined in RCW 9A.04.110(25)(a), (b), or (c).

9 (3) Coercion is a gross misdemeanor unless the person commits the  
10 crime against a family or household member as defined in RCW 10.99.020,  
11 in which case it is a class C felony.

12 **Sec. 3.** RCW 9A.46.110 and 1994 c 271 s 801 are each amended to  
13 read as follows:

14 (1) A person commits the crime of stalking if, without lawful  
15 authority and under circumstances not amounting to a felony attempt of  
16 another crime:

17 (a) He or she intentionally and repeatedly harasses or repeatedly  
18 follows another person; and

19 (b) The person being harassed or followed is placed in fear that  
20 the stalker intends to injure the person, another person, or property  
21 of the person or of another person. The feeling of fear must be one  
22 that a reasonable person in the same situation would experience under  
23 all the circumstances; and

24 (c) The stalker either:

25 (i) Intends to frighten, intimidate, or harass the person; or

26 (ii) Knows or reasonably should know that the person is afraid,  
27 intimidated, or harassed even if the stalker did not intend to place  
28 the person in fear or intimidate or harass the person.

29 (2)(a) It is not a defense to the crime of stalking under  
30 subsection (1)(c)(i) of this section that the stalker was not given  
31 actual notice that the person did not want the stalker to contact or  
32 follow the person; and

33 (b) It is not a defense to the crime of stalking under subsection  
34 (1)(c)(ii) of this section that the stalker did not intend to frighten,  
35 intimidate, or harass the person.

36 (3) It shall be a defense to the crime of stalking that the  
37 defendant is a licensed private ((detective)) investigator acting

1 within the capacity of his or her license as provided by chapter 18.165  
2 RCW.

3 (4) Attempts to contact or follow the person after being given  
4 actual notice that the person does not want to be contacted or followed  
5 constitutes prima facie evidence that the stalker intends to intimidate  
6 or harass the person.

7 (5) A person who stalks another person is guilty of a gross  
8 misdemeanor except that the person is guilty of a class C felony if any  
9 of the following applies: (a) The stalker has previously been  
10 convicted in this state or any other state of any crime of harassment,  
11 as defined in RCW 9A.46.060, of the same victim or members of the  
12 victim's family or household or any person specifically named in a  
13 protective order; (b) the stalking violates any protective order  
14 protecting the person being stalked; (c) the stalker has previously  
15 been convicted of a gross misdemeanor or felony stalking offense under  
16 this section for stalking another person; (d) the stalker was armed  
17 with a deadly weapon, as defined in RCW 9.94A.125, while stalking the  
18 person; (e) the stalker's victim is or was a law enforcement officer,  
19 judge, juror, attorney, victim advocate, legislator, or community  
20 correction's officer, and the stalker stalked the victim to retaliate  
21 against the victim for an act the victim performed during the course of  
22 official duties or to influence the victim's performance of official  
23 duties; ~~((e))~~ (f) the stalker's victim is a current, former, or  
24 prospective witness in an adjudicative proceeding, and the stalker  
25 stalked the victim to retaliate against the victim as a result of the  
26 victim's testimony or potential testimony; or (g) the stalker's victim  
27 is a family or household member as defined in RCW 10.99.020.

28 (6) As used in this section:

29 (a) "Follows" means deliberately maintaining visual or physical  
30 proximity to a specific person over a period of time. A finding that  
31 the alleged stalker repeatedly and deliberately appears at the person's  
32 home, school, place of employment, business, or any other location to  
33 maintain visual or physical proximity to the person is sufficient to  
34 find that the alleged stalker follows the person. It is not necessary  
35 to establish that the alleged stalker follows the person while in  
36 transit from one location to another.

37 (b) "Harasses" means unlawful harassment as defined in RCW  
38 10.14.020.

1 (c) "Protective order" means any temporary or permanent court order  
2 prohibiting or limiting violence against, harassment of, contact or  
3 communication with, or physical proximity to another person.

4 (d) "Repeatedly" means on two or more separate occasions.

5 **Sec. 4.** RCW 9A.52.070 and 1979 ex.s. c 244 s 12 are each amended  
6 to read as follows:

7 (1) A person is guilty of criminal trespass in the first degree if  
8 he knowingly enters or remains unlawfully in a building.

9 (2) Criminal trespass in the first degree is a gross misdemeanor  
10 unless the person commits the crime against a family or household  
11 member as defined in RCW 10.99.020, in which case it is a class C  
12 felony.

13 **Sec. 5.** RCW 9A.48.090 and 1975 1st ex.s. c 260 s 9A.48.090 are  
14 each amended to read as follows:

15 (1) A person is guilty of malicious mischief in the third degree if  
16 he knowingly and maliciously causes physical damage to the property of  
17 another, under circumstances not amounting to malicious mischief in the  
18 first or second degree.

19 (2) Malicious mischief in the third degree is a class C felony if  
20 the person commits the crime against a family or household member as  
21 defined in RCW 10.99.020 regardless of the cost of the damage to the  
22 property. If the crime is not committed against a family or household  
23 member malicious mischief in the third degree is a gross misdemeanor if  
24 the damage to the property is in an amount exceeding fifty dollars;  
25 otherwise, it is a misdemeanor.

26 **Sec. 6.** RCW 26.09.300 and 1995 c 246 s 27 are each amended to read  
27 as follows:

28 (1) Whenever a restraining order is issued under this chapter, and  
29 the person to be restrained knows of the order, a violation of the  
30 provisions restricting the person from acts or threats of violence or  
31 of a provision excluding the person from the residence, workplace,  
32 school, or day care of another is a ((misdemeanor)) class C felony  
33 punishable under chapter 9A.20 RCW.

34 (2) A person is deemed to have notice of a restraining order if:

35 (a) The person to be restrained or the person's attorney signed the  
36 order;

1 (b) The order recites that the person to be restrained or the  
2 person's attorney appeared in person before the court;

3 (c) The order was served upon the person to be restrained; or

4 (d) The peace officer gives the person oral or written evidence of  
5 the order by reading from it or handing to the person a certified copy  
6 of the original order, certified to be an accurate copy of the original  
7 by a notary public or by the clerk of the court.

8 (3) A peace officer shall verify the existence of a restraining  
9 order by:

10 (a) Obtaining information confirming the existence and terms of the  
11 order from a law enforcement agency; or

12 (b) Obtaining a certified copy of the order, certified to be an  
13 accurate copy of the original by a notary public or by the clerk of the  
14 court.

15 (4) A peace officer shall arrest and take into custody, pending  
16 release on bail, personal recognizance, or court order, a person  
17 without a warrant when the officer has probable cause to believe that:

18 (a) A restraining order has been issued under this chapter;

19 (b) The respondent or person to be restrained knows of the order;  
20 and

21 (c) The person to be arrested has violated the terms of the order  
22 restraining the person from acts or threats of violence or excluding  
23 the person from the residence.

24 (5) It is a defense to prosecution under subsection (1) of this  
25 section that the court order was issued contrary to law or court rule.

26 (6) No peace officer may be held criminally or civilly liable for  
27 making an arrest under subsection (4) of this section if the officer  
28 acts in good faith and without malice.

29 **Sec. 7.** RCW 26.50.110 and 1995 c 246 s 14 are each amended to read  
30 as follows:

31 (1) Whenever an order for protection is granted under this chapter  
32 and the respondent or person to be restrained knows of the order, a  
33 violation of the restraint provisions or of a provision excluding the  
34 person from a residence, workplace, school, or day care is a (~~gross~~  
35 ~~misdemeanor~~) class C felony. Upon conviction, and in addition to any  
36 other penalties provided by law, the court may require that the  
37 respondent submit to electronic monitoring. The court shall specify  
38 who shall provide the electronic monitoring services, and the terms

1 under which the monitoring shall be performed. The order also may  
2 include a requirement that the respondent pay the costs of the  
3 monitoring. The court shall consider the ability of the convicted  
4 person to pay for electronic monitoring.

5 (2) A peace officer shall arrest without a warrant and take into  
6 custody a person whom the peace officer has probable cause to believe  
7 has violated an order issued under this chapter that restrains the  
8 person or excludes the person from a residence, workplace, school, or  
9 day care, if the person restrained knows of the order. Presence of the  
10 order in the law enforcement computer-based criminal intelligence  
11 information system is not the only means of establishing knowledge of  
12 the order.

13 (3) A violation of an order for protection shall also constitute  
14 contempt of court, and is subject to the penalties prescribed by law.

15 (4) ~~((Any assault that is a violation of an order issued under this  
16 chapter and that does not amount to assault in the first or second  
17 degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any  
18 conduct in violation of a protective order issued under this chapter  
19 that is reckless and creates a substantial risk of death or serious  
20 physical injury to another person is a class C felony.~~

21 ~~(5))~~) Upon the filing of an affidavit by the petitioner or any  
22 peace officer alleging that the respondent has violated an order for  
23 protection granted under this chapter, the court may issue an order to  
24 the respondent, requiring the respondent to appear and show cause  
25 within fourteen days why the respondent should not be found in contempt  
26 of court and punished accordingly. The hearing may be held in the  
27 court of any county or municipality in which the petitioner or  
28 respondent temporarily or permanently resides at the time of the  
29 alleged violation.

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