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ENGROSSED SUBSTITUTE HOUSE BILL 2702

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State of Washington

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By House Committee on Judiciary (originally sponsored by Representatives R. Johnson, Belcher, Paris, Schmidt, Anderson, Roland, Bray, Jacobsen, Spanel, Scott, Leonard, Sheldon, Wynne, Lisk, Ebersole, Brough, Basich, R. King, Valle, Zellinsky, Kremen, Hochstatter, Wineberry, Winsley, Van Luven, Forner, P. Johnson, Bowman, Pruitt, Fraser, Tate, Ogden, J. Kohl, McLean, Wood and Rasmussen)

Read first time 02/07/92.

1 AN ACT Relating to harassment; amending RCW 9A.46.020, 9A.46.030,  
2 9A.46.060, 9A.46.100, 9.61.230, 9.94A.155, 10.77.205, and 71.05.425;  
3 adding a new section to chapter 9A.46 RCW; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 9A.46 RCW  
6 to read as follows:

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

10 (a) He or she intentionally and repeatedly follows another person  
11 to that person's home, school, place of employment, business, or any  
12 other location, or follows the person while the person is in transit  
13 between locations; and

1 (b) The person being followed is intimidated, harassed, or placed  
2 in fear that the stalker intends to injure the person or property of  
3 the person being followed or of another person. The feeling of fear,  
4 intimidation, or harassment must be one that a reasonable person in the  
5 same situation would experience under all the circumstances; and

6 (c) The stalker either:

7 (i) Intends to frighten, intimidate, or harass the person being  
8 followed; or

9 (ii) Knows or reasonably should know that the person being followed  
10 is afraid, intimidated, or harassed even if the stalker did not intend  
11 to place the person in fear or intimidate or harass the person.

12 (2)(a) It is not a defense to the crime of stalking under  
13 subsection (1)(c)(i) of this section that the stalker was not given  
14 actual notice that the person being followed did not want the stalker  
15 to contact or follow the person; and

16 (b) It is not a defense to the crime of stalking under subsection  
17 (1)(c)(ii) of this section that the stalker did not intend to frighten,  
18 intimidate, or harass the person being followed.

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

23 (4) A person who stalks another person is guilty of a gross  
24 misdemeanor except that the person is guilty of a class C felony if any  
25 of the following applies: (a) The stalker has previously been  
26 convicted in this state or any other state of any crime of harassment,  
27 as defined in RCW 9A.46.060, of the same victim or members of the  
28 victim's family or household or any person specifically named in a no-  
29 contact order or no-harassment order; (b) the person violates a court  
30 order issued pursuant to RCW 9A.46.040 protecting the person being

1 stalked; or (c) the stalker has previously been convicted of a gross  
2 misdemeanor or felony stalking offense under this section for stalking  
3 another person.

4 **Sec. 2.** RCW 9A.46.020 and 1985 c 288 s 2 are each amended to read  
5 as follows:

6 (1) A person is guilty of harassment if:

7 (a) Without lawful authority, the person knowingly threatens:

8 (i) To cause bodily injury in the future to the person threatened  
9 or to any other person; or

10 (ii) To cause physical damage to the property of a person other  
11 than the actor; or

12 (iii) To subject the person threatened or any other person to  
13 physical confinement or restraint; or

14 (iv) Maliciously to do any other act which is intended to  
15 substantially harm the person threatened or another with respect to his  
16 or her physical or mental health or safety; and

17 (b) The person by words or conduct places the person threatened in  
18 reasonable fear that the threat will be carried out.

19 (2) A person who harasses another is guilty of a gross misdemeanor  
20 punishable under chapter 9A.20 RCW, ~~((unless))~~ except that the person  
21 is guilty of a class C felony if either of the following applies: (a)  
22 The person has previously been convicted in this or any other state of  
23 any crime of harassment, as defined in RCW 9A.46.060, of the same  
24 victim or members of the victim's family or household or any person  
25 specifically named in a no-contact or no-harassment order(~~, in which~~  
26 case the person is guilty of a class C felony punishable under chapter  
27 9A.20 RCW)); or (b) the person harasses another person under subsection  
28 (1)(a)(i) of this section by threatening to kill the person threatened  
29 or any other person.

1 (3) The penalties provided in this section for harassment do not  
2 preclude the victim from seeking any other remedy otherwise available  
3 under law.

4 **Sec. 3.** RCW 9A.46.030 and 1985 c 288 s 3 are each amended to read  
5 as follows:

6 Any harassment offense committed as set forth in RCW 9A.46.020 or  
7 section 1 of this act may be deemed to have been committed where the  
8 conduct occurred or at the place from which the threat or threats were  
9 made or at the place where the threats were received.

10 **Sec. 4.** RCW 9A.46.060 and 1988 c 145 s 15 are each amended to read  
11 as follows:

12 As used in this chapter, "harassment" may include but is not  
13 limited to any of the following crimes:

- 14 (1) Harassment (RCW 9A.46.020);
- 15 (2) Malicious harassment (RCW 9A.36.080);
- 16 (3) Telephone harassment (RCW 9.61.230);
- 17 (4) Assault in the first degree (RCW 9A.36.011);
- 18 (5) Assault in the second degree (RCW 9A.36.021);
- 19 (6) Simple assault [Assault in the fourth degree] (RCW 9A.36.041);
- 20 (7) Reckless endangerment [in the second degree] (RCW 9A.36.050);
- 21 (8) Extortion in the first degree (RCW 9A.56.120);
- 22 (9) Extortion in the second degree (RCW 9A.56.130);
- 23 (10) Coercion (RCW 9A.36.070);
- 24 (11) Burglary in the first degree (RCW 9A.52.020);
- 25 (12) Burglary in the second degree (RCW 9A.52.030);
- 26 (13) Criminal trespass in the first degree (RCW 9A.52.070);
- 27 (14) Criminal trespass in the second degree (RCW 9A.52.080);
- 28 (15) Malicious mischief in the first degree (RCW 9A.48.070);

1 (16) Malicious mischief in the second degree (RCW 9A.48.080);  
2 (17) Malicious mischief in the third degree (RCW 9A.48.090);  
3 (18) Kidnapping in the first degree (RCW 9A.40.020);  
4 (19) Kidnapping in the second degree (RCW 9A.40.030);  
5 (20) Unlawful imprisonment (RCW 9A.40.040);  
6 (21) Rape in the first degree (RCW 9A.44.040);  
7 (22) Rape in the second degree (RCW 9A.44.050);  
8 (23) Rape in the third degree (RCW 9A.44.060);  
9 (24) Indecent liberties (RCW 9A.44.100);  
10 (25) Rape of a child in the first degree (RCW 9A.44.073);  
11 (26) Rape of a child in the second degree (RCW 9A.44.076);  
12 (27) Rape of a child in the third degree (RCW 9A.44.079);  
13 (28) Child molestation in the first degree (RCW 9A.44.083);  
14 (29) Child molestation in the second degree (RCW 9A.44.086);  
15 ((and))  
16 (30) Child molestation in the third degree (RCW 9A.44.089); and  
17 (31) Stalking (RCW 9A.46.--- (section 1 of this act)).

18 **Sec. 5.** RCW 9A.46.100 and 1985 c 288 s 10 are each amended to read  
19 as follows:

20 As used in RCW 9.61.230 ((or)), 9A.46.020, or section 1 of this  
21 act, a person has been "convicted" at such time as a plea of guilty has  
22 been accepted or a verdict of guilty has been filed, notwithstanding  
23 the pendency of any future proceedings including but not limited to  
24 sentencing, posttrial motions, and appeals.

25 **Sec. 6.** RCW 9.61.230 and 1985 c 288 s 11 are each amended to read  
26 as follows:

1 Every person who, with intent to harass, intimidate, torment or  
2 embarrass any other person, shall make a telephone call to such other  
3 person:

4 (1) Using any lewd, lascivious, profane, indecent, or obscene words  
5 or language, or suggesting the commission of any lewd or lascivious  
6 act; or

7 (2) Anonymously or repeatedly or at an extremely inconvenient hour,  
8 whether or not conversation ensues; or

9 (3) Threatening to inflict injury on the person or property of the  
10 person called or any member of his or her family or household;

11 shall be guilty of a gross misdemeanor, ~~((unless))~~ except that the  
12 person is guilty of a class C felony if either of the following  
13 applies: (a) That person has previously been convicted of any crime of  
14 harassment, as defined in RCW 9A.46.060, with the same victim or member  
15 of the victim's family or household or any person specifically named in  
16 a no-contact or no-harassment order in this or any other state~~((, in~~  
17 ~~which case the person is guilty of a class C felony punishable under~~  
18 ~~chapter 9A.20 RCW))~~; or

19 (b) That person harasses another person under subsection (3) of  
20 this section by threatening to kill the person threatened or any other  
21 person.

22 **Sec. 7.** RCW 9.94A.155 and 1990 c 3 s 121 are each amended to read  
23 as follows:

24 (1) At the earliest possible date, and in no event later than ten  
25 days before release except in the event of escape or emergency  
26 furloughs as defined in RCW 72.66.010, the department of corrections  
27 shall send written notice of parole, community placement, work release  
28 placement, furlough, or escape about a specific inmate convicted of a  
29 violent offense ~~((or))~~, a sex offense as defined by RCW 9.94A.030, or

1 a felony harassment offense as defined by RCW 9A.46.020 or section 1 of  
2 this act, to all of the following:

3 (a) The chief of police of the city, if any, in which the inmate  
4 will reside or in which placement will be made in a work release  
5 program; and

6 (b) The sheriff of the county in which the inmate will reside or in  
7 which placement will be made in a work release program.

8 (2) The same notice as required by subsection (1) of this section  
9 shall be sent to the following if such notice has been requested in  
10 writing about a specific inmate convicted of a violent offense ~~((or))~~,  
11 a sex offense as defined by RCW 9.94A.030, or a felony harassment  
12 offense as defined by RCW 9.94A.020 or section 1 of this act:

13 (a) The victim of the crime for which the inmate was convicted or  
14 the victim's next of kin if the crime was a homicide;

15 (b) Any witnesses who testified against the inmate in any court  
16 proceedings involving the violent offense; and

17 (c) Any person specified in writing by the prosecuting attorney.  
18 Information regarding victims, next of kin, or witnesses requesting the  
19 notice, information regarding any other person specified in writing by  
20 the prosecuting attorney to receive the notice, and the notice are  
21 confidential and shall not be available to the inmate.

22 (3) If an inmate convicted of a violent offense ~~((or))~~, a sex  
23 offense as defined by RCW 9.94A.030, or a felony harassment offense as  
24 defined by RCW 9A.46.020 or section 1 of this act, escapes from a  
25 correctional facility, the department of corrections shall immediately  
26 notify, by the most reasonable and expedient means available, the chief  
27 of police of the city and the sheriff of the county in which the inmate  
28 resided immediately before the inmate's arrest and conviction. If  
29 previously requested, the department shall also notify the witnesses  
30 and the victim of the crime for which the inmate was convicted or the

1 victim's next of kin if the crime was a homicide. If the inmate is  
2 recaptured, the department shall send notice to the persons designated  
3 in this subsection as soon as possible but in no event later than two  
4 working days after the department learns of such recapture.

5 (4) If the victim, the victim's next of kin, or any witness is  
6 under the age of sixteen, the notice required by this section shall be  
7 sent to the parents or legal guardian of the child.

8 (5) The department of corrections shall send the notices required  
9 by this chapter to the last address provided to the department by the  
10 requesting party. The requesting party shall furnish the department  
11 with a current address.

12 (6) For purposes of this section the following terms have the  
13 following meanings:

14 (a) "Violent offense" means a violent offense under RCW 9.94A.030;

15 (b) "Next of kin" means a person's spouse, parents, siblings and  
16 children.

17 (7) Nothing in this section shall impose any liability upon a chief  
18 of police of a city or sheriff of a county for failing to request in  
19 writing a notice as provided in subsection (1) of this section.

20 **Sec. 8.** RCW 10.77.205 and 1990 c 3 s 104 are each amended to read  
21 as follows:

22 (1)(a) At the earliest possible date, and in no event later than  
23 ten days before conditional release, final discharge, authorized  
24 furlough pursuant to RCW 10.77.163, or transfer to a less-restrictive  
25 facility than a state mental hospital, the superintendent shall send  
26 written notice of the conditional release, final discharge, authorized  
27 furlough, or transfer of a person who has been found not guilty of a  
28 sex ((~~or~~)), violent, or felony harassment offense by reason of insanity



1 and who is now in the custody of the department pursuant to this  
2 chapter, to the following:

3 (i) The chief of police of the city, if any, in which the person  
4 will reside; and

5 (ii) The sheriff of the county in which the person will reside.

6 (b) The same notice as required by (a) of this subsection shall be  
7 sent to the following, if such notice has been requested in writing  
8 about a specific person committed under this chapter:

9 (i) The victim of the crime for which the person was committed or  
10 the victim's next of kin if the crime was a homicide;

11 (ii) Any witnesses who testified against the person in any court  
12 proceedings; and

13 (iii) Any person specified in writing by the prosecuting attorney.  
14 Information regarding victims, next of kin, or witnesses requesting the  
15 notice, information regarding any other person specified in writing by  
16 the prosecuting attorney to receive the notice, and the notice are  
17 confidential and shall not be available to the person committed under  
18 this chapter.

19 (c) In addition to the notice requirements of (a) and (b) of this  
20 subsection, the superintendent shall comply with RCW 10.77.163.

21 (2) If a person who has been found not guilty of a sex ~~((or))~~  
22 violent, or felony harassment offense by reason of insanity and who is  
23 committed under this chapter escapes, the superintendent shall  
24 immediately notify, by the most reasonable and expedient means  
25 available, the chief of police of the city and the sheriff of the  
26 county in which the person resided immediately before the person's  
27 arrest. If previously requested, the superintendent shall also notify  
28 the witnesses and the victim, if any, of the crime for which the person  
29 was committed or the victim's next of kin if the crime was a homicide.  
30 The superintendent shall also notify appropriate persons pursuant to

1 RCW 10.77.165. If the person is recaptured, the secretary shall send  
2 notice to the persons designated in this subsection as soon as possible  
3 but in no event later than two working days after the department learns  
4 of such recapture.

5 (3) If the victim, the victim's next of kin, or any witness is  
6 under the age of sixteen, the notice required by this section shall be  
7 sent to the parents or legal guardian of the child.

8 (4) The department shall send the notices required by this chapter  
9 to the last address provided to the department by the requesting party.  
10 The requesting party shall furnish the department with a current  
11 address.

12 (5) For purposes of this section the following terms have the  
13 following meanings:

14 (a) "Violent offense" means a violent offense under RCW 9.94A.030;

15 (b) "Sex offense" means a sex offense under RCW 9.94A.030;

16 (c) "Next of kin" means a person's spouse, parents, siblings, and  
17 children;

18 (d) "Authorized furlough" means a furlough granted after compliance  
19 with RCW 10.77.163*i*;

20 (e) "Felony harassment offense" means a crime of harassment as  
21 defined in RCW 9A.46.060 that is a felony.

22 **Sec. 9.** RCW 71.05.425 and 1990 c 3 s 109 are each amended to read  
23 as follows:

24 (1)(a) Except as provided in subsection (2) of this section, at the  
25 earliest possible date, and in no event later than ten days before  
26 conditional release, final discharge, authorized leave under RCW  
27 71.05.325(2), or transfer to a less-restrictive facility than a state  
28 mental hospital, the superintendent shall send written notice of  
29 conditional release, final discharge, authorized leave, or transfer of

1 a person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following  
2 dismissal of a sex ~~((e)r))~~, violent, or felony harassment offense  
3 pursuant to RCW 10.77.090(3) to the following:

4 (i) The chief of police of the city, if any, in which the person  
5 will reside; and

6 (ii) The sheriff of the county in which the person will reside.

7 (b) The same notice as required by (a) of this subsection shall be  
8 sent to the following, if such notice has been requested in writing  
9 about a specific person committed under RCW 71.05.280(3) or  
10 71.05.320(2)(c) following dismissal of a sex ~~((e)r))~~, violent, or felony  
11 harassment offense pursuant to RCW 10.77.090(3):

12 (i) The victim of the sex ~~((e)r))~~, violent ~~((erime))~~, or felony  
13 harassment offense that was dismissed pursuant to RCW 10.77.090(3)  
14 preceding commitment under RCW 71.05.280(3) or 71.05.320(2)(c) or the  
15 victim's next of kin if the crime was a homicide;

16 (ii) Any witnesses who testified against the person in any court  
17 proceedings; and

18 (iii) Any person specified in writing by the prosecuting attorney.  
19 Information regarding victims, next of kin, or witnesses requesting the  
20 notice, information regarding any other person specified in writing by  
21 the prosecuting attorney to receive the notice, and the notice are  
22 confidential and shall not be available to the person committed under  
23 this chapter.

24 (2) If a person committed under RCW 71.05.280(3) or 71.05.320(2)(c)  
25 following dismissal of a sex ~~((e)r))~~, violent, or felony harassment  
26 offense pursuant to RCW 10.77.090(3) escapes, the superintendent shall  
27 immediately notify, by the most reasonable and expedient means  
28 available, the chief of police of the city and the sheriff of the  
29 county in which the person resided immediately before the person's  
30 arrest. If previously requested, the superintendent shall also notify

1 the witnesses and the victim of the sex ~~((or))~~, violent ~~((crime))~~, or  
2 felony harassment offense that was dismissed pursuant to RCW  
3 10.77.090(3) preceding commitment under RCW 71.05.280(3) or  
4 71.05.320(2) or the victim's next of kin if the crime was a homicide.  
5 In addition, the secretary shall also notify appropriate parties  
6 pursuant to RCW 71.05.410. If the person is recaptured, the  
7 superintendent shall send notice to the persons designated in this  
8 subsection as soon as possible but in no event later than two working  
9 days after the department learns of such recapture.

10 (3) If the victim, the victim's next of kin, or any witness is  
11 under the age of sixteen, the notice required by this section shall be  
12 sent to the parent or legal guardian of the child.

13 (4) The superintendent shall send the notices required by this  
14 chapter to the last address provided to the department by the  
15 requesting party. The requesting party shall furnish the department  
16 with a current address.

17 (5) For purposes of this section the following terms have the  
18 following meanings:

19 (a) "Violent offense" means a violent offense under RCW 9.94A.030;

20 (b) "Sex offense" means a sex offense under RCW 9.94A.030;

21 (c) "Next of kin" means a person's spouse, parents, siblings, and  
22 children;

23 (d) "Felony harassment offense" means a crime of harassment as  
24 defined in RCW 9A.46.060 that is a felony.

25 NEW SECTION. **Sec. 10.** If any provision of this act or its  
26 application to any person or circumstance is held invalid, the  
27 remainder of the act or the application of the provision to other  
28 persons or circumstances is not affected.