
HOUSE BILL 2808

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By Representatives Ebersole, Forner, J. Kohl, Wineberry, Roland, Morris, Leonard, Riley, Rust, Franklin, Heavey, G. Cole, Dorn, Brough, Paris, Winsley, Jones, Pruitt, Rayburn, Nelson, O'Brien, Prentice, Scott, Ogden, Wood, Sheldon, Rasmussen, Spanel and Anderson

Read first time 01/28/92. Referred to Committee on Judiciary.

1 AN ACT Relating to domestic violence; amending RCW 26.50.030,
2 26.50.035, 26.50.060, 10.99.030, 26.50.010, 26.50.020, 4.08.050,
3 12.04.140, 12.04.150, and 26.28.015; creating new sections; and making
4 an appropriation.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that:

7 Domestic violence is a problem of immense proportions affecting
8 individuals as well as communities. Domestic violence has long been
9 recognized as being at the core of other major social problems: Child
10 abuse, other crimes of violence against person or property, juvenile
11 delinquency, and alcohol and drug abuse. Domestic violence costs
12 millions of dollars each year in the state of Washington for health
13 care, absence from work, services to children, and more. The crisis is
14 growing.

1 While the existing protection order process can be a valuable tool
2 to increase safety for victims and to hold batterers accountable,
3 specific problems in its use have become evident. Victims have
4 difficulty completing the paperwork required particularly if they have
5 limited English proficiency; model forms have been modified to be
6 inconsistent with statutory language; different forms create confusion
7 for law enforcement agencies about the contents and enforceability of
8 orders. Refinements are needed so that victims have the easy, quick,
9 and effective access to the court system envisioned at the time the
10 protection order process was first created.

11 When courts issue mutual protection orders without the filing of
12 separate written petitions, notice to each respondent, and hearing on
13 each petition, the petitioner is deprived of due process. Mutual
14 protection orders label both parties as violent and treat both as being
15 equally at fault: Batterers conclude that the violence is excusable or
16 provoked and victims who are not violent are confused and stigmatized.
17 Enforcement may be ineffective and mutual orders may be used in other
18 proceedings as evidence that the victim is equally at fault.

19 Valuable information about the reported incidents of domestic
20 violence in the state of Washington is unobtainable without gathering
21 data from all law enforcement agencies; without this information, it is
22 difficult for policymakers, funders, and service providers to plan for
23 the resources and services needed to address the issue.

24 Domestic violence must be addressed more widely and more
25 effectively in our state: Greater knowledge by professionals who deal
26 frequently with domestic violence is essential to enforce existing
27 laws, to intervene in domestic violence situations that do not come to
28 the attention of the law enforcement or judicial systems, and to reduce
29 and prevent domestic violence by intervening before the violence
30 becomes severe.

1 Adolescent dating violence is occurring at increasingly high rates:
2 Preventing and confronting adolescent violence is important in
3 preventing potential violence in future adult relationships.

4 **Sec. 2.** RCW 26.50.030 and 1985 c 303 s 2 are each amended to read
5 as follows:

6 There shall exist an action known as a petition for an order for
7 protection in cases of domestic violence.

8 (1) A petition for relief shall allege the existence of domestic
9 violence, and shall be accompanied by an affidavit made under oath
10 stating the specific facts and circumstances from which relief is
11 sought.

12 (2) A petition for relief may be made regardless of whether or not
13 there is a pending lawsuit, complaint, petition, or other action
14 between the parties except in cases where the court realigns petitioner
15 and respondent in accordance with RCW 26.50.060(3).

16 (3) Within ninety days of receipt of the master copy from the
17 administrator for the courts, all court clerk's offices shall make
18 available ((simplified)) the standardized forms, instructions, and
19 ((instructional)) informational brochures required by RCW 26.50.035 and
20 shall fill in and keep current specific program names and telephone
21 numbers for community resources. Any assistance or information
22 provided by clerks under this section does not constitute the practice
23 of law and clerks are not responsible for incorrect information
24 contained in a petition.

25 (4) A filing fee of twenty dollars shall be charged for proceedings
26 under this section. No filing fee may be charged for: (a) A petition
27 filed in an existing action or under an existing cause number brought
28 under this chapter in the jurisdiction where the relief is sought; or
29 (b) the transfer of a case from district or municipal court to superior

1 court under RCW 26.50.020(2). Forms and instructional brochures shall
2 be provided free of charge.

3 (5) A person is not required to post a bond to obtain relief in any
4 proceeding under this section.

5 **Sec. 3.** RCW 26.50.035 and 1985 c 303 s 3 are each amended to read
6 as follows:

7 By January 1, 1993, the administrator for the courts shall develop
8 and prepare, in consultation with interested persons, to include a
9 representative of the state domestic violence coalition, judges, and
10 law enforcement personnel, ((the—forms)) instructions and
11 ((instructional)) informational brochures required under RCW
12 26.50.030(3), standard petition and order for protection forms that
13 must be used after April 15, 1993, for all petitions filed and orders
14 issued under this chapter, and a court clerk's handbook on domestic
15 violence and the protection order process. The instructions shall be
16 designed to assist petitioners in completing the petition. The
17 informational brochure shall describe the use of and the process for
18 obtaining a protection order, a no contact order as provided by RCW
19 10.99.040, a restraining order as provided by RCW 26.09.060, and an
20 antiharassment protection order as provided by chapter 10.14 RCW, along
21 with a list of local community resources. The community resources
22 shall be in the form of a list that includes law enforcement agencies,
23 domestic violence agencies, sexual assault agencies, legal assistance
24 programs, interpreters, multicultural programs, and batterers'
25 treatment programs, which court clerks shall fill in with the names and
26 telephone numbers of programs serving the community in which the court
27 is located. Court clerks shall consult with domestic violence and
28 sexual assault programs, and other interested parties, in preparing the
29 community resource list. The order for protection form shall include,

1 in a conspicuous location, notice of criminal penalties resulting from
2 violation of the order, notice that the petitioner may not waive any
3 provisions of the order, and notice that criminal penalties apply even
4 if the victim allows or invites conduct in violation of the order. The
5 administrator for the courts shall distribute a master copy of the
6 petition and order forms ((and instructional)), instructions, and
7 informational brochures to all court clerks and shall distribute a
8 master copy of the order forms to all superior, district, and municipal
9 courts.

10 The administrator for the courts shall arrange for translation of
11 the instructions and informational brochures into Spanish, Vietnamese,
12 Laotian, Cambodian, and Chinese and shall distribute a master copy of
13 the translated instructions and informational brochures to all court
14 clerks by March 1, 1993.

15 The administrator for the courts shall, in consultation with
16 interested parties to include a representative of the state domestic
17 violence coalition, judges, law enforcement personnel, and staff from
18 multicultural programs, determine by June 30, 1993, whether translation
19 of the petition and standard order forms would substantially improve
20 access to the protection order process for those with limited English
21 proficiency. If so, the administrator for the courts shall arrange for
22 the translation of the petition and standard order forms into Spanish,
23 Vietnamese, Laotian, Cambodian, and Chinese, and shall distribute a
24 master copy of the translated petition and standard order forms to all
25 court clerks by September 1, 1993, along with any necessary
26 instructions or explanations for use of the translated petition and
27 standard order forms.

28 **Sec. 4.** RCW 26.50.060 and 1989 c 411 s 1 are each amended to read
29 as follows:

1 (1) Upon notice and after hearing, the court may provide relief as
2 follows:

3 (a) Restrain (~~(a party)~~) the respondent from committing acts of
4 domestic violence;

5 (b) Exclude the respondent from the dwelling which the parties
6 share or from the residence of the petitioner;

7 (c) On the same basis as is provided in chapter 26.09 RCW, the
8 court shall make residential provision with regard to minor children of
9 the parties. However, parenting plans as specified in chapter 26.09
10 RCW shall not be required under this chapter;

11 (d) Order the respondent to participate in batterers' treatment
12 (~~(or counseling services)~~);

13 (e) Order other relief as it deems necessary for the protection of
14 (~~(a)~~) the petitioner and other family or household members sought to be
15 protected, including orders or directives to a peace officer, as
16 allowed under this chapter;

17 (f) Require the respondent to pay the filing fee and court costs,
18 including service fees, and to reimburse the petitioner for costs
19 incurred in bringing the action, including a reasonable attorney's fee.
20 If the petitioner has been granted leave to proceed in forma pauperis,
21 the court may require the respondent to pay the filing fee and costs,
22 including services fees, to the county or municipality incurring the
23 expense; and

24 (g) Restrain (~~(any party)~~) the respondent from having any contact
25 with the victim of domestic violence or the victim's children or
26 members of the victim's household.

27 (2) Any relief granted by the order for protection, other than a
28 judgment for costs, shall be for a fixed period not to exceed one year.

29 (3) In providing relief under this chapter, the court may realign
30 the designation of the parties as "petitioner" and "respondent" where

1 the court finds that the original petitioner is the abuser and the
2 original respondent is the victim of domestic violence and may issue an
3 ex parte temporary order for protection in accordance with RCW
4 26.50.070 on behalf of the victim until the victim is able to prepare
5 a petition for an order for protection in accordance with RCW
6 26.50.030.

7 (4) Except as provided in subsection (3) of this section, no order
8 for protection shall grant relief to any party except upon notice to
9 the respondent and hearing pursuant to a petition or counter-petition
10 filed and served by the party seeking relief in accordance with RCW
11 26.50.050.

12 **Sec. 5.** RCW 10.99.030 and 1984 c 263 s 21 are each amended to read
13 as follows:

14 (1) All training relating to the handling of domestic violence
15 complaints by law enforcement officers shall stress enforcement of
16 criminal laws in domestic situations, availability of community
17 resources, and protection of the victim. Law enforcement agencies and
18 community organizations with expertise in the issue of domestic
19 violence shall cooperate in all aspects of such training.

20 (2) The primary duty of peace officers, when responding to a
21 domestic violence situation, is to enforce the laws allegedly violated
22 and to protect the complaining party.

23 (3)(a) When a peace officer responds to a domestic violence call
24 and has probable cause to believe that a crime has been committed, the
25 peace officer shall exercise arrest powers with reference to the
26 criteria in RCW 10.31.100. The officer shall notify the victim of the
27 victim's right to initiate a criminal proceeding in all cases where the
28 officer has not exercised arrest powers or decided to initiate criminal

1 proceedings by citation or otherwise. The parties in such cases shall
2 also be advised of the importance of preserving evidence.

3 (b) A peace officer responding to a domestic violence call shall
4 take a complete offense report including the officer's disposition of
5 the case.

6 (4) When a peace officer responds to a domestic violence call, the
7 officer shall advise victims of all reasonable means to prevent further
8 abuse, including advising each person of the availability of a shelter
9 or other services in the community, and giving each person immediate
10 notice of the legal rights and remedies available. The notice shall
11 include handing each person a copy of the following statement:

12 "IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the
13 city or county prosecuting attorney to file a criminal
14 complaint. You also have the right to file a petition in
15 superior, district, or municipal court requesting an order for
16 protection from domestic abuse which could include any of the
17 following: (a) An order restraining your abuser from further
18 acts of abuse; (b) an order directing your abuser to leave your
19 household; (c) an order preventing your abuser from entering
20 your residence, school, business, or place of employment; (d)
21 an order awarding you or the other parent custody of or
22 visitation with your minor child or children; and (e) an order
23 restraining your abuser from molesting or interfering with
24 minor children in your custody. The forms you need to obtain
25 a protection order are available in any municipal, district, or
26 superior court.

27 Information about shelters and alternatives to domestic violence is
28 available from a state-wide twenty-four-hour toll-free hotline at

1 1-800-562-6025. The battered women's shelter and other resources
2 in your area are --- (include local information)"

3 (5) The peace officer may offer, arrange, or facilitate
4 transportation for the victim to a hospital for treatment of injuries
5 or to a place of safety or shelter.

6 (6) The law enforcement agency shall forward the offense report to
7 the appropriate prosecutor within ten days of making such report if
8 there is probable cause to believe that an offense has been committed,
9 unless the case is under active investigation.

10 (7) Each law enforcement agency shall make as soon as practicable
11 a written record and shall maintain records of all incidents of
12 domestic violence reported to it.

13 (8) Records kept pursuant to subsections (3) and (7) of this
14 section shall be made identifiable by means of a departmental code for
15 domestic violence.

16 (9) Commencing January 1, 1993, records of incidents of domestic
17 violence shall be submitted, in accordance with procedures described in
18 this subsection, to the Washington association of sheriffs and police
19 chiefs by all law enforcement agencies. The Washington criminal
20 justice training commission shall amend its contract for collection of
21 state-wide crime data with the Washington association of sheriffs and
22 police chiefs: (a) To require the compilation, presentation, and
23 inclusion of domestic violence incidents in the annual report of crime
24 in Washington produced by the Washington association of sheriffs and
25 police chiefs pursuant to such contract; and (b) to require that, in
26 consultation with interested persons, the Washington association of
27 sheriffs and police chiefs prepare and disseminate procedures to all
28 law enforcement agencies in the state as to how such agencies shall

1 code and report domestic violence incidents to the Washington
2 association of sheriffs and police chiefs.

3 NEW SECTION. **Sec. 6.** The departments of social and health
4 services, community development, and health; the administrator for the
5 courts; and the criminal justice training commission, in cooperation
6 with each other and with the department of social and health services
7 as lead agency shall, in consultation with interested parties, conduct
8 a review of and issue a report on the current level of domestic
9 violence education in the state of Washington, including higher
10 education curricula and continuing professional education for
11 individuals working in positions that involve duties to, or contact
12 with, those affected by domestic violence. Professions for which
13 education levels should be determined include, but are not limited to,
14 health care, mental health, and substance abuse professionals licensed
15 or certified by the state and pastoral counselors, employee assistance
16 counselors, police and law enforcement officers, prosecutors, judges,
17 court administrators, court clerks, probation officers, parole
18 officers, child protective service workers, school counselors,
19 teachers, and clergy. The analysis shall include suggested approaches
20 of how to achieve any needed additional education, and an evaluation of
21 whether there is a need for additional domestic violence education for
22 some or all of these professions, either as part of their higher
23 education curricula or through continuing education or both. The
24 department of social and health services shall report to the house of
25 representatives judiciary and senate law and justice committees
26 regarding its findings and recommendations by September 1, 1992.

27 **Sec. 7.** RCW 26.50.010 and 1991 c 301 s 8 are each amended to read
28 as follows:

1 As used in this chapter, the following terms shall have the
2 meanings given them:

3 (1) "Domestic violence" means: (a) Physical harm, bodily injury,
4 assault, or the infliction of fear of imminent physical harm, bodily
5 injury or assault, between family or household members; or (b) sexual
6 assault of one family or household member by another.

7 (2) "Family or household members" means spouses, former spouses,
8 persons who have a child in common regardless of whether they have been
9 married or have lived together at any time, adult persons related by
10 blood or marriage, ((and)) adult persons who are presently residing
11 together or who have resided together in the past, persons sixteen
12 years of age or older who are presently residing together or who have
13 resided together in the past and who have or have had a dating
14 relationship, and persons sixteen years of age or older with whom a
15 respondent sixteen years of age or older has or has had a dating
16 relationship.

17 (3) "Court" includes the superior, district, and municipal courts
18 of the state of Washington.

19 (4) "Judicial day" does not include Saturdays, Sundays, or legal
20 holidays.

21 **Sec. 8.** RCW 26.50.020 and 1989 c 375 s 28 are each amended to read
22 as follows:

23 (1) Any person may seek relief under this chapter by filing a
24 petition with a court alleging that the person has been the victim of
25 domestic violence committed by the respondent. The person may petition
26 for relief on behalf of himself or herself and on behalf of minor
27 family or household members.

1 (2) A person under eighteen years of age who is sixteen years of
2 age or older may seek relief under this chapter and is not required to
3 seek relief by a guardian or next friend.

4 (3) No guardian or guardian ad litem need be appointed on behalf of
5 a respondent to an action under this chapter who is under eighteen
6 years of age if such respondent is sixteen years of age or older.

7 (4) The court may, if it deems necessary, appoint a guardian ad
8 litem for a petitioner or respondent who is a party to an action under
9 this chapter.

10 (5) The courts defined in RCW 26.50.010(3) have jurisdiction over
11 proceedings under this chapter. The jurisdiction of district and
12 municipal courts under this chapter shall be limited to enforcement of
13 RCW 26.50.110(1), or the equivalent municipal ordinance, and the
14 issuance and enforcement of temporary orders for protection provided
15 for in RCW 26.50.070 if: (a) A superior court has exercised or is
16 exercising jurisdiction over a proceeding under this title or chapter
17 13.34 RCW involving the parties; (b) the petition for relief under this
18 chapter presents issues of residential schedule of and contact with
19 children of the parties; or (c) the petition for relief under this
20 chapter requests the court to exclude a party from the dwelling which
21 the parties share. When the jurisdiction of a district or municipal
22 court is limited to the issuance and enforcement of a temporary order,
23 the district or municipal court shall set the full hearing provided for
24 in RCW 26.50.050 in superior court and transfer the case. If the
25 notice and order are not served on the respondent in time for the full
26 hearing, the issuing court shall have concurrent jurisdiction with the
27 superior court to extend the order for protection.

28 (~~(3)~~) (6) An action under this chapter shall be filed in the
29 county or the municipality where the petitioner resides, unless the
30 petitioner has left the residence or household to avoid abuse. In that

1 case, the petitioner may bring an action in the county or municipality
2 of the previous or the new household or residence.

3 ~~((4))~~ (7) A person's right to petition for relief under this
4 chapter is not affected by the person leaving the residence or
5 household to avoid abuse.

6 **Sec. 9.** RCW 4.08.050 and 1891 c 30 s 1 are each amended to read as
7 follows:

8 Except as provided under RCW 26.50.020, when an infant is a party
9 he or she shall appear by guardian, or if he or she has no guardian, or
10 in the opinion of the court the guardian is an improper person, the
11 court shall appoint one to act. Said guardian shall be appointed as
12 follows:

13 (1) When the infant is plaintiff, upon the application of the
14 infant, if he or she be of the age of fourteen years, or if under that
15 age, upon the application of a relative or friend of the infant.

16 (2) When the infant is defendant, upon the application of the
17 infant, if he or she be of the age of fourteen years, and applies
18 within thirty days after the service of the summons; if he or she be
19 under the age of fourteen, or neglects to apply, then upon the
20 application of any other party to the action, or of a relative or
21 friend of the infant.

22 **Sec. 10.** RCW 12.04.140 and 1971 ex.s. c 292 s 75 are each amended
23 to read as follows:

24 Except as provided under RCW 26.50.020, no action shall be
25 commenced by any person under the age of eighteen years, except by his
26 guardian, or until a next friend for such a person shall have been
27 appointed. Whenever requested, the justice shall appoint some suitable
28 person, who shall consent thereto in writing, to be named by such

1 plaintiff, to act as his or her next friend in such action, who shall
2 be responsible for the costs therein.

3 **Sec. 11.** RCW 12.04.150 and 1971 ex.s. c 292 s 76 are each amended
4 to read as follows:

5 After service and return of process against a defendant under the
6 age of eighteen years, the action shall not be further prosecuted,
7 until a guardian for such defendant shall have been appointed, except
8 as provided under RCW 26.50.020. Upon the request of such defendant,
9 the justice shall appoint some person who shall consent thereto in
10 writing, to be guardian of the defendant in defense of the action; and
11 if the defendant shall not appear on the return day of the process, or
12 if he or she neglect or refuse to nominate such guardian, the justice
13 may, at the request of the plaintiff, appoint any discreet person as
14 such guardian. The consent of the guardian or next friend shall be
15 filed with the justice; and such guardian for the defendant shall not
16 be liable for any costs in the action.

17 **Sec. 12.** RCW 26.28.015 and 1971 ex.s. c 292 s 2 are each amended
18 to read as follows:

19 Notwithstanding any other provision of law, and except as provided
20 under RCW 26.50.020, all persons shall be deemed and taken to be of
21 full age for the specific purposes hereafter enumerated at the age of
22 eighteen years:

23 (1) To enter into any marriage contract without parental consent if
24 otherwise qualified by law;

25 (2) To execute a will for the disposition of both real and personal
26 property if otherwise qualified by law;

27 (3) To vote in any election if authorized by the Constitution and
28 otherwise qualified by law;

1 (4) To enter into any legal contractual obligation and to be
2 legally bound thereby to the full extent as any other adult person;

3 (5) To make decisions in regard to their own body and the body of
4 their lawful issue whether natural born to or adopted by such person to
5 the full extent allowed to any other adult person including but not
6 limited to consent to surgical operations;

7 (6) To sue and be sued on any action to the full extent as any
8 other adult person in any of the courts of this state, without the
9 necessity for a guardian ad litem.

10 NEW SECTION. **Sec. 13.** The sum of _____ dollars, or as
11 much thereof as may be necessary, is appropriated for the biennium
12 ending June 30, 1993, from the general fund to _____ for the
13 purposes of sections 2, 3, and 5 of this act.

14 NEW SECTION. **Sec. 14.** If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.