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ENGROSSED SENATE BILL 6103

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State of Washington

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By Senators Nelson, Rasmussen, Thorsness, M. Kreidler, Sutherland and Erwin

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1 AN ACT Relating to using electronic monitoring as a condition of  
2 release or condition of probation; amending RCW 9.95.210, 10.99.040,  
3 26.50.010, 26.50.060, and 26.50.110; and prescribing penalties.

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

5 **Sec. 1.** RCW 9.95.210 and 1987 c 202 s 146 are each amended to read  
6 as follows:

7 In granting probation, the court may suspend the imposition or the  
8 execution of the sentence and may direct that the suspension may  
9 continue upon such conditions and for such time as it shall designate,  
10 not exceeding the maximum term of sentence or two years, whichever is  
11 longer.

12 In the order granting probation and as a condition thereof, the  
13 court may in its discretion imprison the defendant in the county jail  
14 for a period not exceeding one year and may fine the defendant any sum

1 not exceeding the statutory limit for the offense committed, and court  
2 costs. As a condition of probation, the court shall require the  
3 payment of the penalty assessment required by RCW 7.68.035. The court  
4 may also require the defendant to make such monetary payments, on such  
5 terms as it deems appropriate under the circumstances, as are necessary  
6 (1) to comply with any order of the court for the payment of family  
7 support, (2) to make restitution to any person or persons who may have  
8 suffered loss or damage by reason of the commission of the crime in  
9 question or when the offender pleads guilty to a lesser offense or  
10 fewer offenses and agrees with the prosecutor's recommendation that the  
11 offender be required to pay restitution to a victim of an offense or  
12 offenses which are not prosecuted pursuant to a plea agreement, (3) to  
13 pay such fine as may be imposed and court costs, including  
14 reimbursement of the state for costs of extradition if return to this  
15 state by extradition was required, ((and)) (4) following consideration  
16 of the financial condition of the person subject to possible electronic  
17 monitoring, to pay for the costs of electronic monitoring if that  
18 monitoring was required by the court as a condition of release from  
19 custody or as a condition of probation, and (5) to contribute to a  
20 county or interlocal drug fund, and may require bonds for the faithful  
21 observance of any and all conditions imposed in the probation. The  
22 court shall order the probationer to report to the secretary of  
23 corrections or such officer as the secretary may designate and as a  
24 condition of the probation to follow implicitly the instructions of the  
25 secretary. If the probationer has been ordered to make restitution,  
26 the officer supervising the probationer shall make a reasonable effort  
27 to ascertain whether restitution has been made. If restitution has not  
28 been made as ordered, the officer shall inform the prosecutor of that  
29 violation of the terms of probation not less than three months prior to  
30 the termination of the probation period. The secretary of corrections

1 will promulgate rules and regulations for the conduct of the person  
2 during the term of probation. For defendants found guilty in district  
3 court, like functions as the secretary performs in regard to probation  
4 may be performed by probation officers employed for that purpose by the  
5 county legislative authority of the county wherein the court is  
6 located.

7 **Sec. 2.** RCW 10.99.040 and 1991 c 301 s 4 are each amended to read  
8 as follows:

9 (1) Because of the serious nature of domestic violence, the court  
10 in domestic violence actions:

11 (a) Shall not dismiss any charge or delay disposition because of  
12 concurrent dissolution or other civil proceedings;

13 (b) Shall not require proof that either party is seeking a  
14 dissolution of marriage prior to instigation of criminal proceedings;

15 (c) Shall waive any requirement that the victim's location be  
16 disclosed to any person, other than the attorney of a criminal  
17 defendant, upon a showing that there is a possibility of further  
18 violence: PROVIDED, That the court may order a criminal defense  
19 attorney not to disclose to his client the victim's location; and

20 (d) Shall identify by any reasonable means on docket sheets those  
21 criminal actions arising from acts of domestic violence.

22 (2) Because of the likelihood of repeated violence directed at  
23 those who have been victims of domestic violence in the past, when any  
24 person charged with or arrested for a crime involving domestic violence  
25 is released from custody before arraignment or trial on bail or  
26 personal recognizance, the court authorizing the release may prohibit  
27 that person from having any contact with the victim. The jurisdiction  
28 authorizing the release shall determine whether that person should be  
29 prohibited from having any contact with the victim. If there is no

1 outstanding restraining or protective order prohibiting that person  
2 from having contact with the victim, the court authorizing release may  
3 issue, by telephone, a no-contact order prohibiting the person charged  
4 or arrested from having contact with the victim. The no-contact order  
5 shall also be issued in writing as soon as possible. If the court has  
6 probable cause to believe that the person charged or arrested is likely  
7 to use or display or threaten to use a deadly weapon as defined in RCW  
8 9A.04.110 in any further acts of violence, the court may also require  
9 that person to surrender any deadly weapon in that person's immediate  
10 possession or control, or subject to that person's immediate possession  
11 or control, to the sheriff of the county or chief of police of the  
12 municipality in which that person resides or to the defendant's counsel  
13 for safekeeping.

14 (3) At the time of arraignment the court shall determine whether a  
15 no-contact order shall be issued or extended. If a no-contact order is  
16 issued or extended, the court may also include in the conditions of  
17 release a requirement that the defendant submit to electronic  
18 monitoring. If electronic monitoring is ordered, the court shall  
19 specify who shall provide the monitoring services, and the terms under  
20 which the monitoring shall be performed. Upon conviction, the court  
21 may require as a condition of the sentence that the defendant reimburse  
22 the providing agency for the costs of the electronic monitoring.

23 (4)(a) Willful violation of a court order issued under subsection  
24 (2) or (3) of this section is a misdemeanor. Upon conviction and in  
25 addition to other penalties provided by law, the court may require that  
26 the defendant submit to electronic monitoring. The court shall specify  
27 who shall provide the electronic monitoring services and the terms  
28 under which the monitoring must be performed. The court also may  
29 include a requirement that the defendant pay the costs of the

1 monitoring. The court shall consider the ability of the convicted  
2 person to pay for electronic monitoring.

3 (b) Any assault that is a violation of an order issued under this  
4 section and that does not amount to assault in the first or second  
5 degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any  
6 conduct in violation of a protective order issued under this section  
7 that is reckless and creates a substantial risk of death or serious  
8 physical injury to another person is a class C felony.

9 (c) The written order releasing the person charged or arrested  
10 shall contain the court's directives and shall bear the legend:  
11 Violation of this order is a criminal offense under chapter 10.99 RCW  
12 and will subject a violator to arrest; any assault or reckless  
13 endangerment that is a violation of this order is a felony. A  
14 certified copy of the order shall be provided to the victim. If a no-  
15 contact order has been issued prior to charging, that order shall  
16 expire at arraignment or within seventy-two hours if charges are not  
17 filed. Such orders need not be entered into the computer information  
18 system in this state which is used by law enforcement agencies to list  
19 outstanding warrants.

20 (5) Whenever an order prohibiting contact is issued, modified, or  
21 terminated under subsection (2) or (3) of this section, the clerk of  
22 the court shall forward a copy of the order on or before the next  
23 judicial day to the appropriate law enforcement agency specified in the  
24 order. Upon receipt of the copy of the order the law enforcement  
25 agency shall forthwith enter the order for one year or until the  
26 expiration date specified on the order into any computer information  
27 system available in this state used by law enforcement agencies to list  
28 outstanding warrants. Entry into the law enforcement information  
29 system constitutes notice to all law enforcement agencies of the

1 existence of the order. The order is fully enforceable in any  
2 jurisdiction in the state.

3 **Sec. 3.** RCW 26.50.010 and 1991 c 301 s 8 are each amended to read  
4 as follows:

5 As used in this chapter, the following terms shall have the  
6 meanings given them:

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

11 (2) "Family or household members" means spouses, former spouses,  
12 persons who have a child in common regardless of whether they have been  
13 married or have lived together at any time, adult persons related by  
14 blood or marriage, and adult persons who are presently residing  
15 together or who have resided together in the past.

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

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

20 (5) "Electronic monitoring" means a program in which a person's  
21 presence at a particular location is monitored from a remote location  
22 by use of electronic equipment.

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

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

27 (a) Restrain a party from committing acts of domestic violence;

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

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

7 (d) Order the respondent to participate in treatment or counseling  
8 services;

9 (e) Order other relief as it deems necessary for the protection of  
10 a family or household member, including orders or directives to a peace  
11 officer, as allowed under this chapter;

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

19 (g) Restrain any party from having any contact with the victim of  
20 domestic violence or the victim's children or members of the victim's  
21 household.

22 (h) Require the respondent to submit to electronic monitoring. The  
23 order shall specify who shall provide the electronic monitoring  
24 services and the terms under which the monitoring must be performed.  
25 The order also may include a requirement that the respondent pay the  
26 costs of the monitoring. The court shall consider the ability of the  
27 respondent to pay for electronic monitoring.

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

1 (3) In providing relief under this chapter, the court may realign  
2 the designation of the parties as "petitioner" and "respondent" where  
3 the court finds that the original petitioner is the abuser and the  
4 original respondent is the victim of domestic violence.

5 **Sec. 5.** RCW 26.50.110 and 1991 c 301 s 6 are each amended to read  
6 as follows:

7 (1) Whenever an order for protection is granted under this chapter  
8 and the respondent or person to be restrained knows of the order, a  
9 violation of the restraint provisions or of a provision excluding the  
10 person from a residence is a misdemeanor. Upon conviction, and in  
11 addition to any other penalties provided by law, the court may require  
12 that the respondent submit to electronic monitoring. The court shall  
13 specify who shall provide the electronic monitoring services, and the  
14 terms under which the monitoring shall be performed. The order also  
15 may include a requirement that the respondent pay the costs of the  
16 monitoring. The court shall consider the ability of the convicted  
17 person to pay for electronic monitoring.

18 (2) A peace officer shall arrest without a warrant and take into  
19 custody a person whom the peace officer has probable cause to believe  
20 has violated an order issued under this chapter that restrains the  
21 person or excludes the person from a residence, if the person  
22 restrained knows of the order.

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

25 (4) Any assault that is a violation of an order issued under this  
26 chapter and that does not amount to assault in the first or second  
27 degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any  
28 conduct in violation of a protective order issued under this chapter

1 that is reckless and creates a substantial risk of death or serious  
2 physical injury to another person is a class C felony.

3 (5) Upon the filing of an affidavit by the petitioner or any peace  
4 officer alleging that the respondent has violated an order for  
5 protection granted under this chapter, the court may issue an order to  
6 the respondent, requiring the respondent to appear and show cause  
7 within fourteen days why the respondent should not be found in contempt  
8 of court and punished accordingly. The hearing may be held in the  
9 court of any county or municipality in which the petitioner or  
10 respondent temporarily or permanently resides at the time of the  
11 alleged violation.