

2 **EHB 2472** - S COMM AMD

3 By Committee on Law & Justice

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "**Sec. 1.** RCW 9.94A.370 and 1989 c 124 s 2 are each amended to read
8 as follows:

9 (1) The intersection of the column defined by the offender score
10 and the row defined by the offense seriousness score determines the
11 presumptive sentencing range (see RCW 9.94A.310, (Table 1)). The
12 additional time for deadly weapon findings or for those offenses
13 enumerated in RCW 9.94A.310(4) that were committed in a state
14 correctional facility or county jail shall be added to the entire
15 presumptive sentence range. The court may impose any sentence within
16 the range that it deems appropriate. All presumptive sentence ranges
17 are expressed in terms of total confinement.

18 (2) In determining any sentence, the trial court may rely on no
19 more information than is admitted by the plea agreement, or admitted,
20 acknowledged, or proved in a trial or at the time of sentencing.
21 Acknowledgement includes not objecting to information stated in the
22 presentence reports. Where the defendant disputes material facts, the
23 court must either not consider the fact or grant an evidentiary hearing
24 on the point. The facts shall be deemed proved at the hearing by a
25 preponderance of the evidence. Facts that establish the elements of a
26 more serious crime or additional crimes may not be used to go outside
27 the presumptive sentence range except upon stipulation or when
28 specifically provided for in RCW 9.94A.390(2) (c), (d), (f), and
29 ~~((e))~~ (g).

30 **Sec. 2.** RCW 9.94A.390 and 1995 c 316 s 2 are each amended to read
31 as follows:

32 If the sentencing court finds that an exceptional sentence outside
33 the standard range should be imposed in accordance with RCW
34 9.94A.120(2), the sentence is subject to review only as provided for in
35 RCW 9.94A.210(4).

1 The following are illustrative factors which the court may consider
2 in the exercise of its discretion to impose an exceptional sentence.
3 The following are illustrative only and are not intended to be
4 exclusive reasons for exceptional sentences.

5 (1) Mitigating Circumstances

6 (a) To a significant degree, the victim was an initiator, willing
7 participant, aggressor, or provoker of the incident.

8 (b) Before detection, the defendant compensated, or made a good
9 faith effort to compensate, the victim of the criminal conduct for any
10 damage or injury sustained.

11 (c) The defendant committed the crime under duress, coercion,
12 threat, or compulsion insufficient to constitute a complete defense but
13 which significantly affected his or her conduct.

14 (d) The defendant, with no apparent predisposition to do so, was
15 induced by others to participate in the crime.

16 (e) The defendant's capacity to appreciate the wrongfulness of his
17 or her conduct or to conform his or her conduct to the requirements of
18 the law, was significantly impaired (voluntary use of drugs or alcohol
19 is excluded).

20 (f) The offense was principally accomplished by another person and
21 the defendant manifested extreme caution or sincere concern for the
22 safety or well-being of the victim.

23 (g) The operation of the multiple offense policy of RCW 9.94A.400
24 results in a presumptive sentence that is clearly excessive in light of
25 the purpose of this chapter, as expressed in RCW 9.94A.010.

26 (h) The defendant or the defendant's children suffered a continuing
27 pattern of physical or sexual abuse by the victim of the offense and
28 the offense is a response to that abuse.

29 (2) Aggravating Circumstances

30 (a) The defendant's conduct during the commission of the current
31 offense manifested deliberate cruelty to the victim.

32 (b) The defendant knew or should have known that the victim of the
33 current offense was particularly vulnerable or incapable of resistance
34 due to extreme youth, advanced age, disability, or ill health.

35 (c) The current offense was a major economic offense or series of
36 offenses, so identified by a consideration of any of the following
37 factors:

38 (i) The current offense involved multiple victims or multiple
39 incidents per victim;

1 (ii) The current offense involved attempted or actual monetary loss
2 substantially greater than typical for the offense;

3 (iii) The current offense involved a high degree of sophistication
4 or planning or occurred over a lengthy period of time; or

5 (iv) The defendant used his or her position of trust, confidence,
6 or fiduciary responsibility to facilitate the commission of the current
7 offense.

8 (d) The current offense was a major violation of the Uniform
9 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
10 trafficking in controlled substances, which was more onerous than the
11 typical offense of its statutory definition: The presence of ANY of
12 the following may identify a current offense as a major VUCSA:

13 (i) The current offense involved at least three separate
14 transactions in which controlled substances were sold, transferred, or
15 possessed with intent to do so;

16 (ii) The current offense involved an attempted or actual sale or
17 transfer of controlled substances in quantities substantially larger
18 than for personal use;

19 (iii) The current offense involved the manufacture of controlled
20 substances for use by other parties;

21 (iv) The circumstances of the current offense reveal the offender
22 to have occupied a high position in the drug distribution hierarchy;

23 (v) The current offense involved a high degree of sophistication or
24 planning or occurred over a lengthy period of time or involved a broad
25 geographic area of disbursement; or

26 (vi) The offender used his or her position or status to facilitate
27 the commission of the current offense, including positions of trust,
28 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
29 other medical professional).

30 (e) The current offense included a finding of sexual motivation
31 pursuant to RCW 9.94A.127.

32 (f) The offense was part of an ongoing pattern of sexual abuse of
33 the same victim under the age of eighteen years manifested by multiple
34 incidents over a prolonged period of time.

35 (g) The current offense involved domestic violence, as defined in
36 RCW 10.99.020 and one or more of the following was present:

37 (i) The offense was part of an ongoing pattern of psychological,
38 physical, or sexual abuse of the victim manifested by multiple
39 incidents over a prolonged period of time;

1 (ii) The offense occurred in the presence of the victim's minor
2 children under the age of eighteen years; or

3 (iii) The offender's conduct during the commission of the current
4 offense manifested deliberate cruelty or intimidation of the victim.

5 (h) The operation of the multiple offense policy of RCW 9.94A.400
6 results in a presumptive sentence that is clearly too lenient in light
7 of the purpose of this chapter, as expressed in RCW 9.94A.010.

8 (~~(h)~~) (i) The defendant's prior unscored misdemeanor or prior
9 unscored foreign criminal history results in a presumptive sentence
10 that is clearly too lenient in light of the purpose of this chapter as
11 expressed in RCW 9.94A.010.

12 NEW SECTION. Sec. 3. A new section is added to chapter 9A.36 RCW
13 to read as follows:

14 (1) A person commits the crime of interference with the reporting
15 of domestic violence if the person prevents or attempts to prevent a
16 victim of or a witness to domestic violence, as defined in RCW
17 26.50.010, from calling a 911 emergency communication system, obtaining
18 medical assistance, or making a report to any law enforcement official.

19 (2) Interference with the reporting of domestic violence is a gross
20 misdemeanor.

21 **Sec. 4.** RCW 10.31.100 and 1995 c 246 s 20, 1995 c 184 s 1, and
22 1995 c 93 s 1 are each reenacted and amended to read as follows:

23 A police officer having probable cause to believe that a person has
24 committed or is committing a felony shall have the authority to arrest
25 the person without a warrant. A police officer may arrest a person
26 without a warrant for committing a misdemeanor or gross misdemeanor
27 only when the offense is committed in the presence of the officer,
28 except as provided in subsections (1) through (10) of this section.

29 (1) Any police officer having probable cause to believe that a
30 person has committed or is committing a misdemeanor or gross
31 misdemeanor, involving physical harm or threats of harm to any person
32 or property or the unlawful taking of property or involving the use or
33 possession of cannabis, or involving the acquisition, possession, or
34 consumption of alcohol by a person under the age of twenty-one years
35 under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070
36 or 9A.52.080, shall have the authority to arrest the person.

1 (2) A police officer shall arrest and take into custody, pending
2 release on bail, personal recognizance, or court order, a person
3 without a warrant when the officer has probable cause to believe that:

4 (a) An order has been issued of which the person has knowledge
5 under RCW 10.99.040(2), 10.99.050, 26.09.050, 26.09.060, 26.10.040,
6 26.10.115, 26.44.063, chapter 26.26 RCW, or chapter 26.50 RCW
7 restraining the person and the person has violated the terms of the
8 order restraining the person from acts or threats of violence or
9 ~~((excluding))~~ restraining the person from ((a)) going onto the grounds
10 of or entering a residence, workplace, school, or day care or, in the
11 case of an order issued under RCW 26.44.063, imposing any other
12 restrictions or conditions upon the person; or

13 (b) The person is sixteen years or older and within the preceding
14 four hours has assaulted a family or household member as defined in RCW
15 10.99.020 and the officer believes: (i) A felonious assault has
16 occurred; (ii) an assault has occurred which has resulted in bodily
17 injury to the victim, whether the injury is observable by the
18 responding officer or not; or (iii) that any physical action has
19 occurred which was intended to cause another person reasonably to fear
20 imminent serious bodily injury or death. Bodily injury means physical
21 pain, illness, or an impairment of physical condition. When the
22 officer has probable cause to believe that ~~((spouses, former spouses,~~
23 ~~or other persons who reside together or formerly resided together))~~
24 family or household members have assaulted each other, the officer is
25 not required to arrest both persons. The officer shall arrest the
26 person whom the officer believes to be the primary physical aggressor.
27 In making this determination, the officer shall make every reasonable
28 effort to consider: (i) The intent to protect victims of domestic
29 violence under RCW 10.99.010; (ii) the comparative extent of injuries
30 inflicted or serious threats creating fear of physical injury; and
31 (iii) the history of domestic violence between the persons involved.

32 (3) Any police officer having probable cause to believe that a
33 person has committed or is committing a violation of any of the
34 following traffic laws shall have the authority to arrest the person:

35 (a) RCW 46.52.010, relating to duty on striking an unattended car
36 or other property;

37 (b) RCW 46.52.020, relating to duty in case of injury to or death
38 of a person or damage to an attended vehicle;

1 (c) RCW 46.61.500 or 46.61.530, relating to reckless driving or
2 racing of vehicles;

3 (d) RCW 46.61.502 or 46.61.504, relating to persons under the
4 influence of intoxicating liquor or drugs;

5 (e) RCW 46.20.342, relating to driving a motor vehicle while
6 operator's license is suspended or revoked;

7 (f) RCW 46.61.525, relating to operating a motor vehicle in a
8 negligent manner.

9 (4) A law enforcement officer investigating at the scene of a motor
10 vehicle accident may arrest the driver of a motor vehicle involved in
11 the accident if the officer has probable cause to believe that the
12 driver has committed in connection with the accident a violation of any
13 traffic law or regulation.

14 (5) Any police officer having probable cause to believe that a
15 person has committed or is committing a violation of RCW 88.12.025
16 shall have the authority to arrest the person.

17 (6) An officer may act upon the request of a law enforcement
18 officer in whose presence a traffic infraction was committed, to stop,
19 detain, arrest, or issue a notice of traffic infraction to the driver
20 who is believed to have committed the infraction. The request by the
21 witnessing officer shall give an officer the authority to take
22 appropriate action under the laws of the state of Washington.

23 (7) Any police officer having probable cause to believe that a
24 person has committed or is committing any act of indecent exposure, as
25 defined in RCW 9A.88.010, may arrest the person.

26 (8) A police officer may arrest and take into custody, pending
27 release on bail, personal recognizance, or court order, a person
28 without a warrant when the officer has probable cause to believe that
29 an order has been issued of which the person has knowledge under
30 chapter 10.14 RCW and the person has violated the terms of that order.

31 (9) Any police officer having probable cause to believe that a
32 person has, within twenty-four hours of the alleged violation,
33 committed a violation of RCW 9A.50.020 may arrest such person.

34 (10) A police officer having probable cause to believe that a
35 person illegally possesses or illegally has possessed a firearm or
36 other dangerous weapon on private or public elementary or secondary
37 school premises shall have the authority to arrest the person.

1 For purposes of this subsection, the term "firearm" has the meaning
2 defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning
3 defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

4 (11) Except as specifically provided in subsections (2), (3), (4),
5 and (6) of this section, nothing in this section extends or otherwise
6 affects the powers of arrest prescribed in Title 46 RCW.

7 (12) No police officer may be held criminally or civilly liable for
8 making an arrest pursuant to RCW 10.31.100 (2) or (8) if the police
9 officer acts in good faith and without malice.

10 **Sec. 5.** RCW 10.99.020 and 1995 c 246 s 21 are each amended to read
11 as follows:

12 Unless the context clearly requires otherwise, the definitions in
13 this section apply throughout this chapter.

14 (1) "Family or household members" means spouses, former spouses,
15 persons who have a child in common regardless of whether they have been
16 married or have lived together at any time, adult persons related by
17 blood or marriage, adult persons who are presently residing together or
18 who have resided together in the past, persons sixteen years of age or
19 older who are presently residing together or who have resided together
20 in the past and who have or have had a dating relationship, persons
21 sixteen years of age or older with whom a (~~respondent~~) person sixteen
22 years of age or older has or has had a dating relationship, and persons
23 who have a biological or legal parent-child relationship, including
24 stepparents and stepchildren and grandparents and grandchildren.

25 (2) "Dating relationship" has the same meaning as in RCW 26.50.010.

26 (3) "Domestic violence" includes but is not limited to any of the
27 following crimes when committed by one family or household member
28 against another:

29 (a) Assault in the first degree (RCW 9A.36.011);

30 (b) Assault in the second degree (RCW 9A.36.021);

31 (c) Assault in the third degree (RCW 9A.36.031);

32 (d) Assault in the fourth degree (RCW 9A.36.041);

33 (e) Reckless endangerment in the first degree (RCW 9A.36.045);

34 (f) Reckless endangerment in the second degree (RCW 9A.36.050);

35 (g) Coercion (RCW 9A.36.070);

36 (h) Burglary in the first degree (RCW 9A.52.020);

37 (i) Burglary in the second degree (RCW 9A.52.030);

38 (j) Criminal trespass in the first degree (RCW 9A.52.070);

- 1 (k) Criminal trespass in the second degree (RCW 9A.52.080);
2 (l) Malicious mischief in the first degree (RCW 9A.48.070);
3 (m) Malicious mischief in the second degree (RCW 9A.48.080);
4 (n) Malicious mischief in the third degree (RCW 9A.48.090);
5 (o) Kidnapping in the first degree (RCW 9A.40.020);
6 (p) Kidnapping in the second degree (RCW 9A.40.030);
7 (q) Unlawful imprisonment (RCW 9A.40.040);
8 (r) Violation of the provisions of a restraining order restraining
9 the person or (~~excluding~~) restraining the person from going onto the
10 grounds of or entering a residence, workplace, school, or day care (RCW
11 26.09.300, 26.10.220, or 26.26.138);
12 (s) Violation of the provisions of a protection order or no-contact
13 order restraining the person or (~~excluding~~) restraining the person
14 from going onto the grounds of or entering a residence, workplace,
15 school, or day care (RCW 26.50.060, 26.50.070, 26.50.130, or
16 10.99.040);
17 (t) Rape in the first degree (RCW 9A.44.040);
18 (u) Rape in the second degree (RCW 9A.44.050);
19 (v) Residential burglary (RCW 9A.52.025); (~~and~~)
20 (w) Stalking (RCW 9A.46.110); and
21 (x) Interference with the reporting of domestic violence (section
22 3 of this act).
23 (4) "Victim" means a family or household member who has been
24 subjected to domestic violence.

25 **Sec. 6.** RCW 10.99.030 and 1995 c 246 s 22 are each amended to read
26 as follows:

27 (1) All training relating to the handling of domestic violence
28 complaints by law enforcement officers shall stress enforcement of
29 criminal laws in domestic situations, availability of community
30 resources, and protection of the victim. Law enforcement agencies and
31 community organizations with expertise in the issue of domestic
32 violence shall cooperate in all aspects of such training.

33 (2) The criminal justice training commission shall implement by
34 January 1, 1997, a course of instruction for the training of law
35 enforcement officers in Washington in the handling of domestic violence
36 complaints. The basic law enforcement curriculum of the criminal
37 justice training commission shall include at least twenty hours of
38 basic training instruction on the law enforcement response to domestic

1 violence. The course of instruction, the learning and performance
2 objectives, and the standards for the training shall be developed by
3 the commission and focus on enforcing the criminal laws, safety of the
4 victim, and holding the perpetrator accountable for the violence. The
5 curriculum shall include training on the extent and prevalence of
6 domestic violence, the importance of criminal justice intervention,
7 techniques for responding to incidents that minimize the likelihood of
8 officer injury and that promote victim safety, investigation and
9 interviewing skills, evidence gathering and report writing, assistance
10 to and services for victims and children, verification and enforcement
11 of court orders, liability, and any additional provisions that are
12 necessary to carry out the intention of this subsection.

13 (3) The criminal justice training commission shall develop and
14 update annually an in-service training program to familiarize law
15 enforcement officers with the domestic violence laws. The program
16 shall include techniques for handling incidents of domestic violence
17 that minimize the likelihood of injury to the officer and that promote
18 the safety of all parties. The commission shall make the training
19 program available to all law enforcement agencies in the state.

20 (4) Development of the training in subsections (2) and (3) of this
21 section shall be conducted in conjunction with agencies having a
22 primary responsibility for serving victims of domestic violence with
23 emergency shelter and other services, and representatives to the state-
24 wide organization providing training and education to these
25 organizations and to the general public.

26 (5) The primary duty of peace officers, when responding to a
27 domestic violence situation, is to enforce the laws allegedly violated
28 and to protect the complaining party.

29 (6)(a) When a peace officer responds to a domestic violence call
30 and has probable cause to believe that a crime has been committed, the
31 peace officer shall exercise arrest powers with reference to the
32 criteria in RCW 10.31.100. The officer shall notify the victim of the
33 victim's right to initiate a criminal proceeding in all cases where the
34 officer has not exercised arrest powers or decided to initiate criminal
35 proceedings by citation or otherwise. The parties in such cases shall
36 also be advised of the importance of preserving evidence.

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

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

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

22 Information about shelters and alternatives to domestic
23 violence is available from a state-wide twenty-four-hour toll-
24 free hotline at (include appropriate phone number). The
25 battered women's shelter and other resources in your area are
26 (include local information)"

27 (8) The peace officer may offer, arrange, or facilitate
28 transportation for the victim to a hospital for treatment of injuries
29 or to a place of safety or shelter.

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

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

1 (11) Records kept pursuant to subsections (6) and (10) of this
2 section shall be made identifiable by means of a departmental code for
3 domestic violence.

4 (12) Commencing January 1, 1994, records of incidents of domestic
5 violence shall be submitted, in accordance with procedures described in
6 this subsection, to the Washington association of sheriffs and police
7 chiefs by all law enforcement agencies. The Washington criminal
8 justice training commission shall amend its contract for collection of
9 state-wide crime data with the Washington association of sheriffs and
10 police chiefs:

11 (a) To include a table, in the annual report of crime in Washington
12 produced by the Washington association of sheriffs and police chiefs
13 pursuant to the contract, showing the total number of actual offenses
14 and the number and percent of the offenses that are domestic violence
15 incidents for the following crimes: (i) Criminal homicide, with
16 subtotals for murder and nonnegligent homicide and manslaughter by
17 negligence; (ii) forcible rape, with subtotals for rape by force and
18 attempted forcible rape; (iii) robbery, with subtotals for firearm,
19 knife or cutting instrument, or other dangerous weapon, and strongarm
20 robbery; (iv) assault, with subtotals for firearm, knife or cutting
21 instrument, other dangerous weapon, hands, feet, aggravated, and other
22 nonaggravated assaults; (v) burglary, with subtotals for forcible
23 entry, nonforcible unlawful entry, and attempted forcible entry; (vi)
24 larceny theft, except motor vehicle theft; (vii) motor vehicle theft,
25 with subtotals for autos, trucks and buses, and other vehicles; ((and))
26 (viii) arson; and (ix) violations of the provisions of a protection
27 order or no contact order restraining the person from going onto the
28 grounds of or entering a residence, workplace, school, or day care,
29 provided that specific appropriations are subsequently made for the
30 collection and compilation of data regarding violations of protection
31 orders or no contact orders;

32 (b) To require that the table shall continue to be prepared and
33 contained in the annual report of crime in Washington until that time
34 as comparable or more detailed information about domestic violence
35 incidents is available through the Washington state incident based
36 reporting system and the information is prepared and contained in the
37 annual report of crime in Washington; and

38 (c) To require that, in consultation with interested persons, the
39 Washington association of sheriffs and police chiefs prepare and

1 disseminate procedures to all law enforcement agencies in the state as
2 to how the agencies shall code and report domestic violence incidents
3 to the Washington association of sheriffs and police chiefs.

4 **Sec. 7.** RCW 10.99.040 and 1995 c 246 s 23 are each amended to read
5 as follows:

6 (1) Because of the serious nature of domestic violence, the court
7 in domestic violence actions:

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

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

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

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

20 (2) Because of the likelihood of repeated violence directed at
21 those who have been victims of domestic violence in the past, when any
22 person charged with or arrested for a crime involving domestic violence
23 is released from custody before arraignment or trial on bail or
24 personal recognizance, the court authorizing the release may prohibit
25 that person from having any contact with the victim. The jurisdiction
26 authorizing the release shall determine whether that person should be
27 prohibited from having any contact with the victim. If there is no
28 outstanding restraining or protective order prohibiting that person
29 from having contact with the victim, the court authorizing release may
30 issue, by telephone, a no-contact order prohibiting the person charged
31 or arrested from having contact with the victim. In issuing the order,
32 the court shall consider the provisions of RCW 9.41.800. The no-
33 contact order shall also be issued in writing as soon as possible.

34 (3) At the time of arraignment the court shall determine whether a
35 no-contact order shall be issued or extended. If a no-contact order is
36 issued or extended, the court may also include in the conditions of
37 release a requirement that the defendant submit to electronic
38 monitoring. If electronic monitoring is ordered, the court shall

1 specify who shall provide the monitoring services, and the terms under
2 which the monitoring shall be performed. Upon conviction, the court
3 may require as a condition of the sentence that the defendant reimburse
4 the providing agency for the costs of the electronic monitoring.

5 (4)(a) Willful violation of a court order issued under subsection
6 (2) or (3) of this section is a gross misdemeanor. A third or
7 subsequent conviction for willful violation of a court order issued
8 under subsection (2) or (3) of this section is a class C felony
9 punishable under chapter 9A.20 RCW. Upon conviction and in addition to
10 other penalties provided by law, the court may require that the
11 defendant submit to electronic monitoring. The court shall specify who
12 shall provide the electronic monitoring services and the terms under
13 which the monitoring must be performed. The court also may include a
14 requirement that the defendant pay the costs of the monitoring. The
15 court shall consider the ability of the convicted person to pay for
16 electronic monitoring.

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

24 (c) The written order releasing the person charged or arrested
25 shall contain the court's directives and shall bear the legend:
26 "Violation of this order is a criminal offense under chapter 10.99 RCW
27 and will subject a violator to arrest; any assault or reckless
28 endangerment that is a violation of this order is a felony. You can be
29 arrested even if any person protected by the order invites or allows
30 you to violate the order's prohibitions. You have the sole
31 responsibility to avoid or refrain from violating the order's
32 provisions. Only the court can change the order." A certified copy of
33 the order shall be provided to the victim. If a no-contact order has
34 been issued prior to charging, that order shall expire at arraignment
35 or within seventy-two hours if charges are not filed. Such orders need
36 not be entered into the computer-based criminal intelligence
37 information system in this state which is used by law enforcement
38 agencies to list outstanding warrants.

1 (5) Whenever an order prohibiting contact is issued, modified, or
2 terminated under subsection (2) or (3) of this section, the clerk of
3 the court shall forward a copy of the order on or before the next
4 judicial day to the appropriate law enforcement agency specified in the
5 order. Upon receipt of the copy of the order the law enforcement
6 agency shall forthwith enter the order for one year or until the
7 expiration date specified on the order into any computer-based criminal
8 intelligence information system available in this state used by law
9 enforcement agencies to list outstanding warrants. Entry into the law
10 enforcement information system constitutes notice to all law
11 enforcement agencies of the existence of the order. The order is fully
12 enforceable in any jurisdiction in the state.

13 **Sec. 8.** RCW 10.99.050 and 1991 c 301 s 5 are each amended to read
14 as follows:

15 (1) When a defendant is found guilty of a crime and a condition of
16 the sentence restricts the defendant's ability to have contact with the
17 victim, such condition shall be recorded and a written certified copy
18 of that order shall be provided to the victim.

19 (2) Willful violation of a court order issued under this section is
20 a gross misdemeanor. A third or subsequent conviction for willful
21 violation of a court order issued under this section is a class C
22 felony punishable under chapter 9A.20 RCW. Any assault that is a
23 violation of an order issued under this section and that does not
24 amount to assault in the first or second degree under RCW 9A.36.011 or
25 9A.36.021 is a class C felony, and any conduct in violation of a
26 protective order issued under this section that is reckless and creates
27 a substantial risk of death or serious physical injury to another
28 person is a class C felony. The written order shall contain the
29 court's directives and shall bear the legend: Violation of this order
30 is a criminal offense under chapter 10.99 RCW and will subject a
31 violator to arrest; any assault or reckless endangerment that is a
32 violation of this order is a felony. You can be arrested even if any
33 person protected by the order invites or allows you to violate the
34 order's prohibitions. You have the sole responsibility to avoid or
35 refrain from violating the order's provisions. Only the court can
36 change the order.

37 (3) Whenever an order prohibiting contact is issued pursuant to
38 this section, the clerk of the court shall forward a copy of the order

1 on or before the next judicial day to the appropriate law enforcement
2 agency specified in the order. Upon receipt of the copy of the order
3 the law enforcement agency shall forthwith enter the order for one year
4 into any computer-based criminal intelligence information system
5 available in this state used by law enforcement agencies to list
6 outstanding warrants. Entry into the law enforcement information
7 system constitutes notice to all law enforcement agencies of the
8 existence of the order. The order is fully enforceable in any
9 jurisdiction in the state.

10 **Sec. 9.** RCW 26.09.300 and 1995 c 246 s 27 are each amended to read
11 as follows:

12 (1) Whenever a restraining order is issued under this chapter, and
13 the person to be restrained knows of the order, a violation of the
14 provisions restricting the person from acts or threats of violence or
15 of a provision (~~(excluding)~~) restraining the person from going onto the
16 grounds of or entering the residence, workplace, school, or day care of
17 another is a misdemeanor.

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

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

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

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

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

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

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

32 (b) Obtaining a certified copy of the order, certified to be an
33 accurate copy of the original by a notary public or by the clerk of the
34 court.

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

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

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

3 (c) The person to be arrested has violated the terms of the order
4 restraining the person from acts or threats of violence or
5 (~~excluding~~) restraining the person from going onto the grounds of or
6 entering the residence, workplace, school, or day care of another.

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

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

12 **Sec. 10.** RCW 26.10.220 and 1995 c 246 s 30 are each amended to
13 read as follows:

14 (1) Whenever a restraining order is issued under this chapter, and
15 the person to be restrained knows of the order, a violation of the
16 provisions restricting the person from acts or threats of violence or
17 of a provision (~~excluding~~) restraining the person from going onto the
18 grounds of or entering the residence, workplace, school, or day care of
19 another is a misdemeanor.

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

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

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

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

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

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

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

34 (b) Obtaining a certified copy of the order, certified to be an
35 accurate copy of the original by a notary public or by the clerk of the
36 court.

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

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

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

7 (c) The person to be arrested has violated the terms of the order
8 restraining the person from acts or threats of violence or
9 ~~((excluding))~~ restraining the person from going onto the grounds of or
10 entering the residence, workplace, school, or day care of another.

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

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

16 **Sec. 11.** RCW 26.26.138 and 1995 c 246 s 33 are each amended to
17 read as follows:

18 (1) Whenever a restraining order is issued under this chapter, and
19 the person to be restrained knows of the order, a violation of the
20 provisions restricting the person from acts or threats of violence or
21 of a provision ~~((excluding))~~ restraining the person from going onto the
22 grounds of or entering the residence, workplace, school, or day care of
23 another is a misdemeanor.

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

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

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

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

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

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

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

1 (b) Obtaining a certified copy of the order, certified to be an
2 accurate copy of the original by a notary public or by the clerk of the
3 court.

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

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

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

10 (c) The person to be arrested has violated the terms of the order
11 restraining the person from acts or threats of violence or
12 (~~excluding~~) restraining the person from going onto the grounds of or
13 entering the residence, workplace, school, or day care of another.

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

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

19 **Sec. 12.** RCW 26.50.030 and 1995 c 246 s 3 are each amended to read
20 as follows:

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

23 (1) A petition for relief shall allege the existence of domestic
24 violence, and shall be accompanied by an affidavit made under oath
25 stating the specific facts and circumstances from which relief is
26 sought. Petitioner and respondent shall disclose the existence of any
27 other litigation concerning the custody or residential placement of a
28 child of the parties as set forth in RCW 26.27.090 and the existence of
29 any other restraining, protection, or no contact orders between the
30 parties.

31 (2) A petition for relief may be made regardless of whether or not
32 there is a pending lawsuit, complaint, petition, or other action
33 between the parties except in cases where the court realigns petitioner
34 and respondent in accordance with RCW 26.50.060(4).

35 (3) Within ninety days of receipt of the master copy from the
36 administrator for the courts, all court clerk's offices shall make
37 available the standardized forms, instructions, and informational
38 brochures required by RCW 26.50.035 and shall fill in and keep current

1 specific program names and telephone numbers for community resources.
2 Any assistance or information provided by clerks under this section
3 does not constitute the practice of law and clerks are not responsible
4 for incorrect information contained in a petition.

5 (4) No filing fee may be charged for proceedings under this
6 section. Forms and instructional brochures shall be provided free of
7 charge.

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

10 **Sec. 13.** RCW 26.50.060 and 1995 c 246 s 7 are each amended to read
11 as follows:

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

14 (a) Restrain the respondent from committing acts of domestic
15 violence;

16 (b) Exclude the respondent from the dwelling which the parties
17 share, from the residence, workplace, or school of the petitioner, or
18 from the day care or school of a child;

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

23 (d) Order the respondent to participate in batterers' treatment;

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

28 (f) Require the respondent to pay the administrative court costs
29 and service fees, as established by the county or municipality
30 incurring the expense and to reimburse the petitioner for costs
31 incurred in bringing the action, including a reasonable attorney's fee;

32 (g) Restrain the respondent from having any contact with the victim
33 of domestic violence or the victim's children or members of the
34 victim's household;

35 (h) Require the respondent to submit to electronic monitoring. The
36 order shall specify who shall provide the electronic monitoring
37 services and the terms under which the monitoring must be performed.
38 The order also may include a requirement that the respondent pay the

1 costs of the monitoring. The court shall consider the ability of the
2 respondent to pay for electronic monitoring;

3 (i) Consider the provisions of RCW 9.41.800;

4 (j) Order possession and use of essential personal effects. The
5 court shall list the essential personal effects with sufficient
6 specificity to make it clear which property is included; and

7 (k) Order use of a vehicle.

8 (2) If a restraining order restrains the respondent from contacting
9 the respondent's minor children the restraint shall be for a fixed
10 period not to exceed one year. This limitation is not applicable to
11 orders for protection issued under chapter 26.09, 26.10, or 26.26 RCW.
12 With regard to other relief, if the petitioner has petitioned for
13 relief on his or her own behalf or on behalf of the petitioner's family
14 or household members or minor children, and the court finds that the
15 respondent is likely to resume acts of domestic violence against the
16 petitioner or the petitioner's family or household members or minor
17 children when the order expires, the court may either grant relief for
18 a fixed period or enter a permanent order of protection.

19 If the petitioner has petitioned for relief on behalf of the
20 respondent's minor children, the court shall advise the petitioner that
21 if the petitioner wants to continue protection for a period beyond one
22 year the petitioner may either petition for renewal pursuant to the
23 provisions of this chapter or may seek relief pursuant to the
24 provisions of chapter 26.09 or 26.26 RCW.

25 (3) If the court grants an order for a fixed time period, the
26 petitioner may apply for renewal of the order by filing a petition for
27 renewal at any time within the three months before the order expires.
28 The petition for renewal shall state the reasons why the petitioner
29 seeks to renew the protection order. Upon receipt of the petition for
30 renewal the court shall order a hearing which shall be not later than
31 fourteen days from the date of the order. Except as provided in RCW
32 26.50.085, personal service shall be made on the respondent not less
33 than five days before the hearing. If timely service cannot be made
34 the court shall set a new hearing date and shall either require
35 additional attempts at obtaining personal service or permit service by
36 publication as provided in RCW 26.50.085 or by mail as provided in RCW
37 26.50.123. If the court permits service by publication or mail, the
38 court shall set the new hearing date not later than twenty-four days
39 from the date of the order. If the order expires because timely

1 service cannot be made the court shall grant an ex parte order of
2 protection as provided in RCW 26.50.070. The court shall grant the
3 petition for renewal unless the respondent proves by a preponderance of
4 the evidence that the respondent will not resume acts of domestic
5 violence against the petitioner or the petitioner's children or family
6 or household members when the order expires. The court may renew the
7 protection order for another fixed time period or may enter a permanent
8 order as provided in this section. The court may award court costs,
9 service fees, and reasonable attorneys' fees as provided in subsection
10 (1)(f) of this section.

11 (4) In providing relief under this chapter, the court may realign
12 the designation of the parties as "petitioner" and "respondent" where
13 the court finds that the original petitioner is the abuser and the
14 original respondent is the victim of domestic violence and may issue an
15 ex parte temporary order for protection in accordance with RCW
16 26.50.070 on behalf of the victim until the victim is able to prepare
17 a petition for an order for protection in accordance with RCW
18 26.50.030.

19 (5) Except as provided in subsection (4) of this section, no order
20 for protection shall grant relief to any party except upon notice to
21 the respondent and hearing pursuant to a petition or counter-petition
22 filed and served by the party seeking relief in accordance with RCW
23 26.50.050.

24 (6) The court order shall specify the date the order expires if
25 any. The court order shall also state whether the court issued the
26 protection order following personal service (~~(or)~~) service by
27 publication, or service by mail and whether the court has approved
28 service by publication or mail of an order issued under this section.

29 (7) If the court declines to issue an order for protection or
30 declines to renew an order for protection, the court shall state in
31 writing on the order the particular reasons for the court's denial.

32 **Sec. 14.** RCW 26.50.070 and 1995 c 246 s 8 are each amended to read
33 as follows:

34 (1) Where an application under this section alleges that
35 irreparable injury could result from domestic violence if an order is
36 not issued immediately without prior notice to the respondent, the
37 court may grant an ex parte temporary order for protection, pending a

1 full hearing, and grant relief as the court deems proper, including an
2 order:

3 (a) Restraining any party from committing acts of domestic
4 violence;

5 (b) (~~Excluding~~) Restraining any party from going onto the grounds
6 of or entering the dwelling (~~shared or from the residence of the~~
7 other)) that the parties share, from the residence, workplace, or
8 school of the other, or from the day care or school of a child until
9 further order of the court;

10 (c) Restraining any party from interfering with the other's custody
11 of the minor children or from removing the children from the
12 jurisdiction of the court;

13 (d) Restraining any party from having any contact with the victim
14 of domestic violence or the victim's children or members of the
15 victim's household; and

16 (e) Considering the provisions of RCW 9.41.800.

17 (2) Irreparable injury under this section includes but is not
18 limited to situations in which the respondent has recently threatened
19 petitioner with bodily injury or has engaged in acts of domestic
20 violence against the petitioner.

21 (3) The court shall hold an ex parte hearing in person or by
22 telephone on the day the petition is filed or on the following judicial
23 day.

24 (4) An ex parte temporary order for protection shall be effective
25 for a fixed period not to exceed fourteen days or twenty-four days if
26 the court has permitted service by publication under RCW 26.50.085 or
27 by mail under RCW 26.50.123. The ex parte order may be reissued. A
28 full hearing, as provided in this chapter, shall be set for not later
29 than fourteen days from the issuance of the temporary order or not
30 later than twenty-four days if service by publication or by mail is
31 permitted. Except as provided in RCW 26.50.050, 26.50.085, and
32 26.50.123, the respondent shall be personally served with a copy of the
33 ex parte order along with a copy of the petition and notice of the date
34 set for the hearing.

35 (5) Any order issued under this section shall contain the date and
36 time of issuance and the expiration date and shall be entered into a
37 state-wide judicial information system by the clerk of the court within
38 one judicial day after issuance.

1 (6) If the court declines to issue an ex parte temporary order for
2 protection the court shall state the particular reasons for the court's
3 denial. The court's denial of a motion for an ex parte order of
4 protection shall be filed with the court.

5 **Sec. 15.** RCW 26.50.100 and 1995 c 246 s 13 are each amended to
6 read as follows:

7 (1) A copy of an order for protection granted under this chapter
8 shall be forwarded by the clerk of the court on or before the next
9 judicial day to the appropriate law enforcement agency specified in the
10 order.

11 Upon receipt of the order, the law enforcement agency shall
12 forthwith enter the order into any computer-based criminal intelligence
13 information system available in this state used by law enforcement
14 agencies to list outstanding warrants. The order shall remain in the
15 computer for the period stated in the order. The law enforcement
16 agency shall only expunge from the computer-based criminal intelligence
17 information system orders that are expired, vacated, or superseded.
18 Entry into the law enforcement information system constitutes notice to
19 all law enforcement agencies of the existence of the order. The order
20 is fully enforceable in any county in the state.

21 (2) The information entered into the computer-based criminal
22 intelligence information system shall include notice to law enforcement
23 whether the order was personally served (~~(or)~~) or served by publication,
24 or served by mail.

25 **Sec. 16.** RCW 26.50.110 and 1995 c 246 s 14 are each amended to
26 read as follows:

27 (1) Whenever an order for protection is granted under this chapter
28 and the respondent or person to be restrained knows of the order, a
29 violation of the restraint provisions or of a provision excluding the
30 person from a residence, workplace, school, or day care is a gross
31 misdemeanor. A third or subsequent conviction for violating an order
32 for protection granted under this chapter is a class C felony
33 punishable under chapter 9A.20 RCW. Upon conviction, and in addition
34 to any other penalties provided by law, the court may require that the
35 respondent submit to electronic monitoring. The court shall specify
36 who shall provide the electronic monitoring services, and the terms
37 under which the monitoring shall be performed. The order also may

1 include a requirement that the respondent pay the costs of the
2 monitoring. The court shall consider the ability of the convicted
3 person to pay for electronic monitoring.

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

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

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

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

29 **Sec. 17.** RCW 26.50.115 and 1995 c 246 s 15 are each amended to
30 read as follows:

31 (1) When the court issues an ex parte order pursuant to RCW
32 26.50.070 or an order of protection (~~(ordered issued)~~) pursuant to RCW
33 26.50.060, the court shall advise the petitioner that the respondent
34 may not be subjected to the penalties set forth in RCW 26.50.110 for a
35 violation of the order unless the respondent knows of the order.

36 (2) When a peace officer investigates a report of an alleged
37 violation of an order for protection issued under this chapter the
38 officer shall attempt to determine whether the respondent knew of the

1 existence of the protection order. If the law enforcement officer
2 determines that the respondent did not or probably did not know about
3 the protection order and the officer is provided a current copy of the
4 order, the officer shall serve the order on the respondent if the
5 respondent is present. If the respondent is not present, the officer
6 shall make reasonable efforts to serve a copy of the order on the
7 respondent. If the officer serves the respondent with the petitioner's
8 copy of the order, the officer shall give petitioner a receipt
9 indicating that petitioner's copy has been served on the respondent.
10 After the officer has served the order on the respondent, the officer
11 shall enforce prospective compliance with the order.

12 (3) Presentation of an unexpired, certified copy of a protection
13 order with proof of service is sufficient for a law enforcement officer
14 to enforce (~~(the terms of)~~) the order regardless of the presence of the
15 order in the law enforcement computer-based criminal intelligence
16 information system."

17 **EHB 2472** - S COMM AMD
18 By Committee on Law & Justice

19
20 On page 1, line 1 of the title, after "violence;" strike the
21 remainder of the title and insert "amending RCW 9.94A.370, 9.94A.390,
22 10.99.020, 10.99.030, 10.99.040, 10.99.050, 26.09.300, 26.10.220,
23 26.26.138, 26.50.030, 26.50.060, 26.50.070, 26.50.100, 26.50.110, and
24 26.50.115; reenacting and amending RCW 10.31.100; adding a new section
25 to chapter 9A.36 RCW; and prescribing penalties."

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