

**ESHB 2363** - S COMM AMD

By Committee on Human Services & Corrections

NOT ADOPTED 02/29/2012

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 9A.46.040 and 2011 c 307 s 4 are each amended to read  
4 as follows:

5 (1) Because of the likelihood of repeated harassment directed at  
6 those who have been victims of harassment in the past, when any  
7 defendant charged with a crime involving harassment is released from  
8 custody before trial on bail or personal recognizance, the court  
9 authorizing the release may require that the defendant:

10 (a) Stay away from the home, school, business, or place of  
11 employment of the victim or victims of the alleged offense or other  
12 location, as shall be specifically named by the court in the order;

13 (b) Refrain from contacting, intimidating, threatening, or  
14 otherwise interfering with the victim or victims of the alleged offense  
15 and such other persons, including but not limited to members of the  
16 family or household of the victim, as shall be specifically named by  
17 the court in the order.

18 (2) (~~An intentional~~) Willful violation of a court order issued  
19 under this section or an equivalent local ordinance is a gross  
20 misdemeanor. The written order releasing the defendant shall contain  
21 the court's directives and shall bear the legend: Violation of this  
22 order is a criminal offense under chapter 9A.46 RCW. A certified copy  
23 of the order shall be provided to the victim by the clerk of the court.

24 **Sec. 2.** RCW 9A.46.080 and 2011 c 307 s 5 are each amended to read  
25 as follows:

26 The victim shall be informed by local law enforcement agencies or  
27 the prosecuting attorney of the final disposition of the case in which  
28 the victim is involved. If a defendant is found guilty of a crime of  
29 harassment and a condition of the sentence restricts the defendant's

1 ability to have contact with the victim or witnesses, the condition  
2 shall be recorded and a written certified copy of that order shall be  
3 provided to the victim or witnesses by the clerk of the court. Willful  
4 violation of a court order issued under this section or an equivalent  
5 local ordinance is a gross misdemeanor. The written order shall  
6 contain the court's directives and shall bear the legend: Violation of  
7 this order is a criminal offense under chapter 9A.46 RCW and will  
8 subject a violator to arrest.

9 **Sec. 3.** RCW 10.99.040 and 2010 c 274 s 309 are each amended to  
10 read as follows:

11 (1) Because of the serious nature of domestic violence, the court  
12 in domestic violence actions:

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

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

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

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

25 (2)(a) Because of the likelihood of repeated violence directed at  
26 those who have been victims of domestic violence in the past, when any  
27 person charged with or arrested for a crime involving domestic violence  
28 is released from custody before arraignment or trial on bail or  
29 personal recognizance, the court authorizing the release may prohibit  
30 that person from having any contact with the victim. The jurisdiction  
31 authorizing the release shall determine whether that person should be  
32 prohibited from having any contact with the victim. If there is no  
33 outstanding restraining or protective order prohibiting that person  
34 from having contact with the victim, the court authorizing release may  
35 issue, by telephone, a no-contact order prohibiting the person charged  
36 or arrested from having contact with the victim or from knowingly

1 coming within, or knowingly remaining within, a specified distance of  
2 a location.

3 (b) In issuing the order, the court shall consider the provisions  
4 of RCW 9.41.800.

5 (c) The no-contact order shall also be issued in writing as soon as  
6 possible, and shall state that it may be extended as provided in  
7 subsection (3) of this section. By January 1, 2011, the administrative  
8 office of the courts shall develop a pattern form for all no-contact  
9 orders issued under this chapter. A no-contact order issued under this  
10 chapter must substantially comply with the pattern form developed by  
11 the administrative office of the courts.

12 (3) At the time of arraignment the court shall determine whether a  
13 no-contact order shall be issued or extended. So long as the court  
14 finds probable cause, the court may issue or extend a no-contact order  
15 even if the defendant fails to appear at arraignment. The no-contact  
16 order shall terminate if the defendant is acquitted or the charges are  
17 dismissed. If a no-contact order is issued or extended, the court may  
18 also include in the conditions of release a requirement that the  
19 defendant submit to electronic monitoring. If electronic monitoring is  
20 ordered, the court shall specify who shall provide the monitoring  
21 services, and the terms under which the monitoring shall be performed.  
22 Upon conviction, the court may require as a condition of the sentence  
23 that the defendant reimburse the providing agency for the costs of the  
24 electronic monitoring.

25 (4)(a) Willful violation of a court order issued under subsection  
26 (2) ~~((or))~~, (3), or (7) of this section is punishable under RCW  
27 26.50.110.

28 (b) The written order releasing the person charged or arrested  
29 shall contain the court's directives and shall bear the legend:  
30 "Violation of this order is a criminal offense under chapter 26.50 RCW  
31 and will subject a violator to arrest; any assault, drive-by shooting,  
32 or reckless endangerment that is a violation of this order is a felony.  
33 You can be arrested even if any person protected by the order invites  
34 or allows you to violate the order's prohibitions. You have the sole  
35 responsibility to avoid or refrain from violating the order's  
36 provisions. Only the court can change the order."

37 (c) A certified copy of the order shall be provided to the victim.

1 (5) If a no-contact order has been issued prior to charging, that  
2 order shall expire at arraignment or within seventy-two hours if  
3 charges are not filed. (~~Such orders need not be entered into the~~  
4 ~~computer-based criminal intelligence information system in this state~~  
5 ~~which is used by law enforcement agencies to list outstanding~~  
6 ~~warrants.~~)

7 (6) Whenever a no-contact order is issued, modified, or terminated  
8 under subsection (2) or (3) of this section, the clerk of the court  
9 shall forward a copy of the order on or before the next judicial day to  
10 the appropriate law enforcement agency specified in the order. Upon  
11 receipt of the copy of the order the law enforcement agency shall enter  
12 the order for one year or until the expiration date specified on the  
13 order into any computer-based criminal intelligence information system  
14 available in this state used by law enforcement agencies to list  
15 outstanding warrants. Entry into the computer-based criminal  
16 intelligence information system constitutes notice to all law  
17 enforcement agencies of the existence of the order. The order is fully  
18 enforceable in any jurisdiction in the state. Upon receipt of notice  
19 that an order has been terminated under subsection (3) of this section,  
20 the law enforcement agency shall remove the order from the computer-  
21 based criminal intelligence information system.

22 (7) All courts shall develop policies and procedures by January 1,  
23 2011, to grant victims a process to modify or rescind a no-contact  
24 order issued under this chapter. The administrative office of the  
25 courts shall develop a model policy to assist the courts in  
26 implementing the requirements of this subsection.

27 NEW SECTION. **Sec. 4.** A new section is added to chapter 10.14 RCW  
28 to read as follows:

29 (1) A defendant arrested for violating any civil antiharassment  
30 protection order issued pursuant to this chapter is required to appear  
31 in person before a magistrate within one judicial day after the arrest.  
32 At the time of the appearance, the court shall determine the necessity  
33 of imposing a no-contact order or other conditions of pretrial release  
34 in accordance with RCW 9A.46.050.

35 (2) A defendant who is charged by citation, complaint, or  
36 information with violating any civil antiharassment protection order

1 issued pursuant to this chapter and not arrested shall appear in court  
2 for arraignment in accordance with RCW 9A.46.050.

3 (3) Appearances required pursuant to this section are mandatory and  
4 cannot be waived.

5 **Sec. 5.** RCW 26.09.060 and 2008 c 6 s 1009 are each amended to read  
6 as follows:

7 (1) In a proceeding for:

8 (a) Dissolution of marriage or domestic partnership, legal  
9 separation, or a declaration of invalidity; or

10 (b) Disposition of property or liabilities, maintenance, or support  
11 following dissolution of the marriage or the domestic partnership by a  
12 court which lacked personal jurisdiction over the absent spouse or  
13 absent domestic partner; either party may move for temporary  
14 maintenance or for temporary support of children entitled to support.  
15 The motion shall be accompanied by an affidavit setting forth the  
16 factual basis for the motion and the amounts requested.

17 (2) As a part of a motion for temporary maintenance or support or  
18 by independent motion accompanied by affidavit, either party may  
19 request the court to issue a temporary restraining order or preliminary  
20 injunction, providing relief proper in the circumstances, and  
21 restraining or enjoining any person from:

22 (a) Transferring, removing, encumbering, concealing, or in any way  
23 disposing of any property except in the usual course of business or for  
24 the necessities of life, and, if so restrained or enjoined, requiring  
25 him or her to notify the moving party of any proposed extraordinary  
26 expenditures made after the order is issued;

27 (b) Molesting or disturbing the peace of the other party or of any  
28 child;

29 (c) Going onto the grounds of or entering the home, workplace, or  
30 school of the other party or the day care or school of any child upon  
31 a showing of the necessity therefor;

32 (d) Knowingly coming within, or knowingly remaining within, a  
33 specified distance from a specified location; and

34 (e) Removing a child from the jurisdiction of the court.

35 (3)(a) Either party may request a domestic violence protection  
36 order under chapter 26.50 RCW or an antiharassment protection order  
37 under chapter 10.14 RCW on a temporary basis. The court may grant any

1 of the relief provided in RCW 26.50.060 except relief pertaining to  
2 residential provisions for the children which provisions shall be  
3 provided for under this chapter, and any of the relief provided in RCW  
4 10.14.080. Ex parte orders issued under this subsection shall be  
5 effective for a fixed period not to exceed fourteen days, or upon court  
6 order, not to exceed twenty-four days if necessary to ensure that all  
7 temporary motions in the case can be heard at the same time.

8 (b) In cases in which the court has made a finding of domestic  
9 violence or child abuse, the court may not require a victim of domestic  
10 violence or the custodial parent of a victim of child abuse to disclose  
11 to the other party information that would reasonably be expected to  
12 enable the perpetrator of domestic violence or child abuse to obtain  
13 previously undisclosed information regarding the name, location, or  
14 address of a victim's residence, employer, or school during the period  
15 of an initial temporary order or after a permanent order has been  
16 issued.

17 (c) In cases in which domestic violence or child abuse has been  
18 alleged but the court has not yet made a finding regarding such  
19 allegations, the court shall provide the party alleging domestic  
20 violence or child abuse with the opportunity to prove the allegations  
21 before ordering the disclosure of information that would reasonably be  
22 expected to enable the alleged perpetrator of domestic violence or  
23 child abuse to obtain previously undisclosed information regarding the  
24 name, location, or address of a victim's residence, employer, or school  
25 during the period of an initial temporary order or after a permanent  
26 order has been issued.

27 (4) In issuing the order, the court shall consider the provisions  
28 of RCW 9.41.800.

29 (5) The court may issue a temporary restraining order without  
30 requiring notice to the other party only if it finds on the basis of  
31 the moving affidavit or other evidence that irreparable injury could  
32 result if an order is not issued until the time for responding has  
33 elapsed.

34 (6) The court may issue a temporary restraining order or  
35 preliminary injunction and an order for temporary maintenance or  
36 support in such amounts and on such terms as are just and proper in the  
37 circumstances. The court may in its discretion waive the filing of the  
38 bond or the posting of security.

1 (7) Restraining orders issued under this section restraining the  
2 person from molesting or disturbing another party, or from going onto  
3 the grounds of or entering the home, workplace, or school of the other  
4 party or the day care or school of any child, or prohibiting the person  
5 from knowingly coming within, or knowingly remaining within, a  
6 specified distance of a location, shall prominently bear on the front  
7 page of the order the legend: VIOLATION OF THIS ORDER WITH ACTUAL  
8 NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW AND  
9 WILL SUBJECT A VIOLATOR TO ARREST.

10 (8) The court shall order that any temporary restraining order  
11 bearing a criminal offense legend, any domestic violence protection  
12 order, or any antiharassment protection order granted under this  
13 section be forwarded by the clerk of the court on or before the next  
14 judicial day to the appropriate law enforcement agency specified in the  
15 order. Upon receipt of the order, the law enforcement agency shall  
16 enter the order into any computer-based criminal intelligence  
17 information system available in this state used by law enforcement  
18 agencies to list outstanding warrants. Entry into the computer-based  
19 criminal intelligence information system constitutes notice to all law  
20 enforcement agencies of the existence of the order. The order is fully  
21 enforceable in any county in the state.

22 (9) If a restraining order issued pursuant to this section is  
23 modified or terminated, the clerk of the court shall notify the law  
24 enforcement agency specified in the order on or before the next  
25 judicial day. Upon receipt of notice that an order has been  
26 terminated, the law enforcement agency shall remove the order from any  
27 computer-based criminal intelligence system.

28 (10) A temporary order, temporary restraining order, or preliminary  
29 injunction:

30 (a) Does not prejudice the rights of a party or any child which are  
31 to be adjudicated at subsequent hearings in the proceeding;

32 (b) May be revoked or modified;

33 (c) Terminates when the final decree is entered, except as provided  
34 under subsection (11) of this section, or when the petition for  
35 dissolution, legal separation, or declaration of invalidity is  
36 dismissed;

37 (d) May be entered in a proceeding for the modification of an  
38 existing decree.

1 (11) Delinquent support payments accrued under an order for  
2 temporary support remain collectible and are not extinguished when a  
3 final decree is entered unless the decree contains specific language to  
4 the contrary. A support debt under a temporary order owed to the state  
5 for public assistance expenditures shall not be extinguished by the  
6 final decree if:

7 (a) The obligor was given notice of the state's interest under  
8 chapter 74.20A RCW; or

9 (b) The temporary order directs the obligor to make support  
10 payments to the office of support enforcement or the Washington state  
11 support registry.

12 **Sec. 6.** RCW 43.235.040 and 2000 c 50 s 4 are each amended to read  
13 as follows:

14 (1) An oral or written communication or a document shared within or  
15 produced by a ((~~regional~~)) domestic violence fatality review panel  
16 related to a domestic violence fatality review is confidential and not  
17 subject to disclosure or discoverable by a third party. An oral or  
18 written communication or a document provided by a third party to a  
19 ((~~regional~~)) domestic violence fatality review panel, or between a  
20 third party and a ((~~regional~~)) domestic violence fatality review panel  
21 is confidential and not subject to disclosure or discovery by a third  
22 party. Notwithstanding the foregoing, recommendations from the  
23 ((~~regional~~)) domestic violence fatality review panel and the  
24 coordinating entity generally may be disclosed minus personal  
25 identifiers.

26 (2) The ((~~regional~~)) review panels, only to the extent otherwise  
27 permitted by law or court rule, shall have access to information and  
28 records regarding the domestic violence victims and perpetrators under  
29 review held by domestic violence perpetrators' treatment providers;  
30 dental care providers; hospitals, medical providers, and pathologists;  
31 coroners and medical examiners; mental health providers; lawyers; the  
32 state and local governments; the courts; and employers. The  
33 coordinating entity and the ((~~regional~~)) review panels shall maintain  
34 the confidentiality of such information to the extent required by any  
35 applicable law.

36 (3) The ((~~regional~~)) review panels shall review, only to the extent  
37 otherwise permitted by law or court rule when determined to be relevant



1 and necessary to an investigation, guardian ad litem reports, parenting  
2 evaluations, and victim impact statements; probation information;  
3 mental health evaluations done for court; presentence interviews and  
4 reports, and any recommendations made regarding bail and release on own  
5 recognizance; child protection services, welfare, and other information  
6 held by the department; any law enforcement incident documentation,  
7 such as incident reports, dispatch records, victim, witness, and  
8 suspect statements, and any supplemental reports, probable cause  
9 statements, and 911 call taker's reports; corrections and postsentence  
10 supervision reports; and any other information determined to be  
11 relevant to the review. The coordinating entity and the (~~regional~~)  
12 review panels shall maintain the confidentiality of such information to  
13 the extent required by any applicable law.

14 **Sec. 7.** RCW 43.235.050 and 2000 c 50 s 5 are each amended to read  
15 as follows:

16 If acting in good faith, without malice, and within the parameters  
17 of this chapter and the protocols established, representatives of the  
18 coordinating entity and the statewide and regional domestic violence  
19 fatality review panels are immune from civil liability for an activity  
20 related to reviews of particular fatalities.

21 NEW SECTION. **Sec. 8.** A new section is added to chapter 26.12 RCW  
22 to read as follows:

23 The court shall act in accordance with the requirements of the  
24 address confidentiality program pursuant to chapter 40.24 RCW in the  
25 course of all proceedings under this title. A court order for  
26 information protected by the address confidentiality program may only  
27 be issued upon completing the requirements of RCW 40.24.075.

28 NEW SECTION. **Sec. 9.** A new section is added to chapter 26.50 RCW  
29 to read as follows:

30 (1) Except as otherwise provided in subsection (2) of this section,  
31 no court or administrative body may compel any person or domestic  
32 violence program as defined in RCW 70.123.020 to disclose the name,  
33 address, or location of any domestic violence program, including a  
34 shelter or transitional housing facility location in any civil or  
35 criminal case or in any administrative proceeding.

1 (2)(a) A court may compel disclosure of the name, address, or  
2 location of a domestic violence program only if the court finds,  
3 following a hearing, that there is clear and convincing evidence that  
4 failure to disclose would be likely to result in an imminent risk of  
5 serious bodily harm or death to a domestic violence victim or another  
6 person. In a proceeding where the domestic violence program is a party  
7 to the proceeding, a court may compel disclosure of the name, address,  
8 or location of a domestic violence program if the court finds that such  
9 information is necessary and relevant to the facts of the case.

10 (b) A court may only compel the disclosure of the name, address, or  
11 location of a domestic violence program following a written pretrial  
12 motion made to a court stating that discovery is requested of the  
13 information about the domestic violence program. The written motion  
14 must be accompanied by an affidavit or affidavits setting forth  
15 specifically the reasons why discovery is requested, and the court  
16 shall review the domestic violence program's information in camera to  
17 determine whether disclosure is permitted under (a) of this subsection.

18 (c) In any proceeding where the confidential name, address, or  
19 location of a domestic violence program is ordered to be disclosed, the  
20 court shall additionally order that the parties be prohibited from  
21 further dissemination of the confidential information, and that any  
22 portion of any records containing such confidential information be  
23 sealed.

24 (3) Any person who obtains access to and intentionally and  
25 maliciously releases confidential information about the location of a  
26 domestic violence program for any purpose other than required by a  
27 court proceeding is guilty of a gross misdemeanor.

28 NEW SECTION. **Sec. 10.** A new section is added to chapter 26.50 RCW  
29 to read as follows:

30 (1) The Washington state institute for public policy shall conduct  
31 a statewide study to assess recidivism by domestic violence offenders  
32 involved in the criminal justice system, examine effective community  
33 supervision practices of domestic violence offenders as it relates to  
34 Washington state institute for public policy findings on evidence-based  
35 community supervision, and assess domestic violence perpetrator  
36 treatment. The institute shall report recidivism rates of domestic  
37 violence offenders in Washington, and if data is available, the report

1 must also include an estimate of the number of domestic violence  
2 offenders sentenced to certified domestic violence perpetrator  
3 treatment in Washington state and completion rates for those entering  
4 treatment.

5 (2) The study must be done in collaboration with the Washington  
6 state gender and justice commission and experts on domestic violence  
7 and must include a review and update of the literature on domestic  
8 violence perpetrator treatment, and provide a description of studies  
9 used in meta-analysis of domestic violence perpetrator treatment. The  
10 institute shall report on other treatments and programs, including  
11 related findings on evidence-based community supervision, that are  
12 effective at reducing recidivism among the general offender population.  
13 The institute shall survey other states to study how misdemeanor and  
14 felony domestic violence cases are handled and assess whether domestic  
15 violence perpetrator treatment is required by law and whether a  
16 treatment modality is codified in law. The institute shall complete  
17 the review and report results to the legislature by January 1, 2013.

18 NEW SECTION. **Sec. 11.** If specific funding for the purposes of  
19 section 10 of this act, referencing section 10 of this act by bill or  
20 chapter number and section number, is not provided by June 30, 2012, in  
21 the omnibus appropriations act, section 10 of this act is null and  
22 void."

**ESHB 2363** - S COMM AMD

By Committee on Human Services & Corrections

**NOT ADOPTED 02/29/2012**

23 On page 1, line 2 of the title, after "harassment;" strike the  
24 remainder of the title and insert "amending RCW 9A.46.040, 9A.46.080,  
25 10.99.040, 26.09.060, 43.235.040, and 43.235.050; adding a new section  
26 to chapter 10.14 RCW; adding a new section to chapter 26.12 RCW; adding  
27 new sections to chapter 26.50 RCW; creating a new section; and  
28 prescribing penalties."

EFFECT: The restriction on court's authority in a dissolution proceeding to require disclosure of information that has previously been undisclosed that would reasonably be expected to enable an alleged perpetrator of domestic violence or child abuse to discover information related to the location of the alleged victim's residence, workplace, or school is limited to cases where there has been a finding of domestic violence or child abuse. If there has been an allegation but not a finding, the petitioner must be given an opportunity to prove the allegation. This applies during the period of an initial temporary protection order or after a permanent order has been issued.

The civil infraction prohibiting release of confidential information relating to the location of a domestic violence program is eliminated; language making it a gross misdemeanor to release such information intentionally and maliciously is retained.

--- END ---