
Judiciary Committee

HB 2363

Title: An act relating to protecting victims of domestic violence and harassment.

Brief Description: Protecting victims of domestic violence and harassment.

Sponsors: Representatives Goodman, Kenney, Orwall, Darneille, Ryu, Roberts, Appleton, Dickerson, Ladenburg, Reykdal, Jinkins, Santos and Kagi.

Brief Summary of Bill

- Modifies existing laws and adds new sections concerning domestic violence and antiharassment criminal no-contact orders and civil protection orders, confidentiality in court proceedings when domestic violence is involved, and confidentiality and immunity standards for domestic violence fatality review panels.
- Orders a study to assess domestic violence perpetrator treatment and recidivism by domestic violence offenders.

Hearing Date: 1/26/12

Staff: Omeara Harrington (786-7136).

Background:

Confidentiality in Court Proceedings Involving Domestic Violence.

Name Changes. Generally, name change petitions are filed in district court and the court records are public documents. However, a victim of domestic violence may instead elect to petition for a name change in superior court and have the court record sealed due to reasonable fear for his or her safety or that of his or her child or ward. There is no public access to the court records from name change proceedings under this process.

Address Confidentiality Program. The address confidentiality program allows people meeting certain criteria to apply to the Secretary of State for a separate address to be designated to serve

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as the person's public address in order to keep his or her actual address confidential. An address can be designated for people who have a good reason to believe that they are a victim of domestic violence, sexual assault, trafficking, or stalking and are in fear for their safety. People may apply on their own behalf or on behalf of a minor or incapacitated person who meets these criteria. An address can also be designated for applicants who are targets for threats or harassment because of their involvement in the criminal justice system.

A court order for disclosure of address confidentiality program participant information may only be issued upon a probable cause that release is necessary for a criminal investigation or to prevent immediate risk to a minor.

Family Law Proceedings. In cases involving domestic violence or child abuse, if residential time is ordered, the court may order the exchange to occur in a protected setting. In extreme cases, the court may order the use of supervised visitation and safe exchange centers. If a parent who is seeking to relocate a child is an address confidentiality program participant, the notice of intended relocation need not contain protected information.

Criminal No-Contact and Civil Protection Orders.

There are several kinds of orders available to limit respondents' contact with victims. No-contact orders are commonly issued as part of criminal proceedings, and civil protection orders are available regardless of whether a criminal case is pending. Generally, violation of a protection order or no-contact order is a gross misdemeanor. If the restrained person has two prior convictions for violations or the violation involves reckless endangerment or assault, violation is a class C felony.

Domestic Violence. Civil domestic violence protection orders are available to those who have suffered physical harm, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking by a family or household member. In addition to restraining further acts of domestic violence, the order can prohibit the perpetrator from contacting the victim or knowingly coming within a specified distance of a location.

Additionally, no-contact orders can be issued in criminal cases involving domestic violence. They may be issued before, after, or concurrently with civil protection orders. No-contact orders automatically expire at arraignment (unless extended or reissued), upon dismissal or acquittal, or upon termination of the sentence or elimination of that condition of the sentence. These orders can also be entered telephonically and reduced to writing soon thereafter if there is no outstanding restraining or protective order already in place.

Harassment. Civil antiharassment protection orders are available to those who have been seriously alarmed, annoyed, or harassed by a conduct which serves no legitimate or lawful purpose. The petitioner does not need to establish that they had any sort of special relationship with the respondent. The court may issue an ex parte temporary antiharassment order to prevent irreparable injury. Ex parte orders are effective for a fixed period not to exceed 14 days, or 24 days if the court has permitted service by publication. Upon a hearing, the court may order a full civil antiharassment protection order. These orders last for one year unless the court deems that it is likely that the harassment will resume when the order expires, in which case the order may

last for a fixed time longer than one year or be permanent. Willful violation of an antiharassment protection order is a gross misdemeanor.

No-contact orders in criminal proceedings for harassment can be ordered in much the same way as domestic violence no-contact orders. An intentional violation of such a court order is a misdemeanor. Willful violation of a harassment-based post-conviction no-contact order is also a misdemeanor.

Confidentiality Standards for Domestic Violence Fatality Review Panels.

The Domestic Violence Fatality Review (DVFR) was formed in 1997, and began reviewing domestic violence fatality cases in 1998. In 2000 the Legislature established the fatality review process in statute. The Department of Social and Health Services (DSHS) contracts with the Washington State Coalition Against Domestic Violence to coordinate the review of domestic violence fatalities.

Oral and written communication and documents shared within or produced by a regional domestic violence fatality review panel are confidential and not subject to disclosure or discovery by a third party. The representatives of a regional domestic violence fatality review are immune from civil liability for any activity related to reviews of particular fatalities as a result of good faith actions within established parameters and protocols.

As of 2011, in addition to the existing authority to convene regional domestic violence fatality review panels, the DVFR is authorized to convene statewide issue-specific review panels, gather information for use in those panels, and to provide training and technical assistance to the issue-specific panels.

Domestic Violence Perpetrator Treatment.

Washington law provides that a court may order a defendant (or respondent) to participate in a domestic violence perpetrator treatment program when he or she is convicted of a domestic violence offense or is found to have committed domestic violence for the purposes of a domestic violence protection order. Thus, courts maintain discretion over whether to order treatment or not. State law provides minimum requirements for the goals and curriculum of domestic violence treatment programs and directs the Department of Social and Human Services to adopt rules for the certification and regulation of individual programs. Certified domestic violence perpetrator treatment programs are provided by private organizations.

Summary of Bill:

Confidentiality in Court Proceedings Involving Domestic Violence.

Name Changes. When a domestic violence victim files for a confidential name change in superior court, the superior court clerk must file the petition as a "confidential case type." If the court finds that the petitioner is in reasonable fear for his or her own safety or that of his or her child or ward, then the court is required to grant the petition. If that standard is not met, then the court will deny the petition and the petitioner is directed to re-file for a public name change in district court.

Address Confidentiality in Dissolution Proceedings. In dissolution proceedings involving domestic violence or child abuse, the court is prohibited from requiring a victim of domestic violence or the custodial parent of a victim of child abuse to disclose information that would reasonably be expected to enable the perpetrator to obtain confidential information about the victim's residence, employer, or school. An exception is made for cases in which the court finds that disclosure is necessary to protect the health or safety of a minor child.

Confidentiality of Domestic Violence Program Information. No court or administrative body is permitted to compel a person to disclose the name or address of a domestic violence program unless the court finds that there is clear and convincing evidence that failure to disclose such information would be likely to result in an imminent risk of serious bodily harm or death. If the domestic violence program is a party to the proceeding, then the court may require disclosure if disclosure is necessary and relevant to the facts of the case.

It is a gross misdemeanor to obtain access to and release the confidential location information of a domestic violence program for any purpose other than as required by a court proceeding, unless such release is ordered a court order or authorized by the domestic violence program.

Address Confidentiality Program and Family Law Proceedings. Family courts must comply with the requirements of the address confidentiality program in the course of all proceedings.

Antiharassment Protection Orders and No-Contact Orders.

A defendant arrested for violating any civil antiharassment protection order must appear in person within one judicial day of arrest, at which time the court will determine the necessity of imposing a no-contact order or conditions on pretrial release. A defendant who is charged by citation, complaint, or information and not arrested must appear in court for arraignment within 14 days.

An out of custody defendant who is subject to a no-contact order pursuant to a pending criminal charge for harassment violates court ordered restrictions on contact with the victim if the violation is "willful" rather than "intentional."

The penalty for violation of a no-contact order pursuant to final disposition of a harassment case is raised from a misdemeanor to a gross misdemeanor.

Domestic Violence No-Contact Orders.

A no-contact order pursuant to a criminal case involving domestic violence may be issued or extended even when the defendant fails to appear at arraignment as long as the court finds probable cause.

The court is granted the authority to reissue a previously terminated no-contact order provided that there has been a substantial change in circumstances. The court's findings must be based in part on an affidavit made under oath by a person with reason to believe that the protection of a no-contact order is necessary, which includes, but is not limited to, a victim, prosecutor, domestic violence advocate, or law enforcement officer. A defendant is not subject to penalties of

violating an order that he or she does not know about. A temporary no-contact order may be issued on an ex parte basis in order to avoid irreparable injury based on recent threats of bodily injury or acts of domestic violence. Such an order lasts for a fixed period not to exceed 14 days, unless the court has permitted service by publication or mail, in which case the order cannot exceed 24 days. A full hearing will be set for no later than 14 days, and the defendant must be personally served. In the case of service or publication or mail, the time limit is increased to 24 days, and no personal service is required.

No contact orders that are issued prior to charging and expire at arraignment, or within 72 hours in absence of charging, can no longer qualify for exemption from entry into the criminal intelligence information system.

Domestic Violence Fatality Review Panels.

Statewide review panels are subject to the same confidentiality standards and are allowed the same immunity as regional review panels.

Washington State Institute of Public Policy Study.

The Washington State Institute of Public Policy shall conduct a study to assess recidivism by domestic violence offenders and assess domestic violence perpetrator treatment. The study provision becomes null and void in the event that funding is not appropriated.

Appropriation: None.

Fiscal Note: Requested on January 21, 2012.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.