

FINAL BILL REPORT

ESHB 2363

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Synopsis as Enacted

Brief Description: Protecting victims of domestic violence and harassment.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Goodman, Kenney, Orwall, Darneille, Ryu, Roberts, Appleton, Dickerson, Ladenburg, Reykdal, Jinkins, Santos and Kagi).

House Committee on Judiciary
Senate Committee on Human Services & Corrections

Background:

Confidentiality in Court Proceedings Involving Domestic Violence.

Address Confidentiality Program.

The address confidentiality program allows people meeting certain criteria to apply to the Secretary of State for a separate address designated as the person's public address in order to keep his or her actual address confidential. Addresses may be designated for people who have good reason to believe that they are victims 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 meeting these criteria. Addresses may also be designated for applicants who are targets of 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 finding of 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 of the child to occur in a protected setting. In extreme cases, the court may order the use of supervised visitation or 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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

There are several kinds of orders that 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. With some limited exceptions, orders must be entered into a computer-based criminal intelligence system to notify law enforcement of the existence of the order. Generally, violation of a protection order or no-contact order is a gross misdemeanor. Violation of some orders is a class C felony if the restrained person has two prior convictions for violations or the violation involves Reckless Endangerment or Assault.

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, an order may prohibit a perpetrator from contacting his or her victim or knowingly coming within a specified distance of a location.

Additionally, no-contact orders may 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 may 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 course of conduct which serves no legitimate or lawful purpose. The petitioner does not need to establish that he or she had any sort of special relationship with the respondent. In order to prevent irreparable injury, the court may issue an ex parte temporary antiharassment order that will last 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 are 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 legislation was enacted to establish 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 on a regional domestic violence fatality review panel 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. State law provides minimum requirements for the goals and curriculum of domestic violence treatment programs and directs the DSHS to adopt rules for the certification and regulation of individual programs. Certified domestic violence perpetrator treatment programs are provided by private organizations.

Summary:

Confidentiality in Court Proceedings Involving Domestic Violence.

Non-disclosure of Victim Location Information in Dissolution Proceedings.

At the initial hearing in a dissolution action in which the court has made a finding of domestic violence or child abuse, the court may not require a victim of domestic violence or the custodial parent of a victim of child abuse to disclose to the other party information that would reasonably be expected to enable the perpetrator to obtain previously undisclosed information about the victim's residence, employer, or school. In subsequent hearings, the court must carefully weigh the safety interests of the victim before issuing an order that would require disclosure.

In cases in which domestic violence or child abuse has been alleged but the court has not made a finding regarding the allegations, the court must give the alleging party the opportunity to prove the allegations before ordering the disclosure.

Confidentiality of Domestic Violence Program Information.

No court or administrative body is permitted to compel a person to disclose the name, address, or location of a domestic violence program absent a finding by clear and convincing evidence that disclosure is necessary for the implementation of justice. In considering whether disclosure is necessary, the court must first consider the safety and confidentiality concerns of the parties and other residents of the domestic violence program, and other alternatives to disclosure that would protect the parties' interests. The domestic violence program must be provided with notice of the request for disclosure and an opportunity to

respond. If disclosure is ordered, the court must additionally prohibit further dissemination and must seal the records containing the information.

It is a gross misdemeanor to obtain access to and willfully and maliciously release confidential information regarding the location of a domestic violence program for any purpose other than as required by a court proceeding.

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 in 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.

No-contact orders that are issued prior to charging and expire at arraignment, or within 72 hours in absence of charging, 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 must conduct a study to assess recidivism by domestic violence offenders and assess domestic violence perpetrator treatment. A report of the results is due to the Legislature by January 1, 2013.

The study provision is null and void unless funded in the budget.

Votes on Final Passage:

House	97	0	
Senate	48	0	(Senate amended)
House	96	0	(House concurred)

Effective: June 7, 2012