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HOUSE BILL 2464

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State of Washington

62nd Legislature

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By Representatives Goodman, Rodne, Pedersen, Pearson, Hurst, Darneille, Kelley, Fagan, and Dahlquist; by request of Attorney General

Read first time 01/16/12. Referred to Committee on Judiciary.

1 AN ACT Relating to stalking protection orders; amending RCW  
2 9.94A.535, 9A.46.040, 9A.46.110, and 10.14.070; adding a new section to  
3 chapter 9A.46 RCW; adding a new chapter to Title 7 RCW; and prescribing  
4 penalties.

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

6 NEW SECTION. **Sec. 1.** Stalking is a crime that affects 3.4 million  
7 people over the age of eighteen each year in the United States. Almost  
8 half of those victims experience at least one unwanted contact per  
9 week. Twenty-nine percent of stalking victims fear that the stalking  
10 will never stop. The prevalence of anxiety, insomnia, social  
11 dysfunction, and severe depression is much higher among stalking  
12 victims than the general population. Three in four stalking victims  
13 are stalked by someone they know, and at least thirty percent of  
14 stalking victims are stalked by a current or former intimate partner.  
15 For many of those victims, the domestic violence protection order is a  
16 tool they can access to help them stay safer. For those who have not  
17 had an intimate relationship with the person stalking them, there are  
18 few remedies for them under the law. Victims who do not report the  
19 crime still desire safety and protection from future interactions with

1 the offender. Some cases in which the stalking is reported are not  
2 prosecuted. In these situations, the victim should be able to seek a  
3 civil remedy requiring that the offender stay away from the victim. It  
4 is the intent of the legislature that the stalking protection order  
5 created by this chapter be a remedy for victims who do not qualify for  
6 a domestic violence order of protection. Moreover, the legislature  
7 finds that preventing the issuance of conflicting orders is in the  
8 interest of both petitioners and respondents. It is the intent of the  
9 legislature that the court shall be expressly authorized to consult  
10 with the judicial information system prior to entering an order under  
11 this chapter.

12 NEW SECTION. **Sec. 2.** The definitions in this section apply  
13 throughout this chapter unless the context clearly requires otherwise.

14 (1) "Petitioner" means any named petitioner for the stalking  
15 protection order or any named victim of stalking conduct on whose  
16 behalf the petition is brought.

17 (2) "Stalking conduct" means any of the following:

18 (a) Any act of stalking as defined under RCW 9A.46.110;

19 (b) Any act of cyberstalking as defined under RCW 9.61.260;

20 (c) Any willful course of conduct involving repeated or continuing  
21 contacts, attempts to contact, monitoring, keeping under observation,  
22 or following of another that would cause a reasonable person to feel  
23 frightened, intimidated, threatened, or harassed.

24 (3) "Stalking protection order" means an ex parte temporary order  
25 or a final order granted under this chapter, which includes a remedy  
26 authorized in section 10 of this act.

27 NEW SECTION. **Sec. 3.** There shall exist an action known as a  
28 petition for a stalking protection order.

29 (1) A petition for relief shall allege the existence of stalking  
30 conduct and shall be accompanied by an affidavit made under oath  
31 stating the specific reasons that have caused the petitioner to become  
32 reasonably fearful that the respondent intends to injure the petitioner  
33 or another person, or the petitioner's property or the property of  
34 another. Petitioner and respondent shall disclose the existence of any  
35 other litigation or of any other restraining, protection, or no-contact  
36 orders between the parties.

1 (2) A petition for relief may be made regardless of whether or not  
2 there is a pending lawsuit, complaint, petition, or other action  
3 between the parties.

4 (3) Forms and instructional brochures and the necessary number of  
5 certified copies shall be provided free of charge.

6 (4) A person is not required to post a bond to obtain relief in any  
7 proceeding under this section.

8 (5) If the petition states that disclosure of the petitioner's  
9 address would risk abuse of the petitioner or any member of the  
10 petitioner's family or household, that address may be omitted from all  
11 documents filed with the court. If the petitioner has not disclosed an  
12 address under this subsection, the petitioner shall designate an  
13 alternative address at which the respondent may serve notice of any  
14 motions.

15 NEW SECTION. **Sec. 4.** A petition for a stalking protection order  
16 may be filed by a person:

17 (1) Who does not qualify for a protection order under chapter 26.50  
18 RCW and who is a victim of stalking conduct; or

19 (2) On behalf of any of the following persons who is a victim of  
20 stalking conduct and who does not qualify for a protection order under  
21 chapter 26.50 RCW:

22 (a) A minor child;

23 (b) A vulnerable adult as defined in RCW 74.34.020 and where the  
24 petitioner is an interested person as defined in RCW 74.34.020(10); or

25 (c) Any other adult who, because of age, disability, health, or  
26 inaccessibility, cannot file the petition.

27 NEW SECTION. **Sec. 5.** (1) Any person may seek relief under this  
28 chapter by filing a petition with a court alleging that the person has  
29 been the victim of stalking conduct committed by the respondent.

30 (2) A person under eighteen years of age who is sixteen years of  
31 age or older may seek relief under this chapter and is not required to  
32 seek relief by a guardian or next friend.

33 (3) No guardian or guardian ad litem need be appointed on behalf of  
34 a respondent to an action under this chapter who is under eighteen  
35 years of age if such respondent is fourteen years of age or older.

1 (4) The court may, if it deems necessary, appoint a guardian ad  
2 litem for a petitioner or respondent who is a party to an action under  
3 this chapter.

4 (5) Jurisdiction of the courts over proceedings under this chapter  
5 shall be the same as jurisdiction over domestic violence protection  
6 orders under RCW 26.50.020(5).

7 (6) An action under this chapter may be filed in the county or the  
8 municipality where the petitioner resides.

9 NEW SECTION. **Sec. 6.** Upon receipt of the petition, the court  
10 shall order a hearing which shall be held not later than fourteen days  
11 from the date of the order. The court may schedule a hearing by  
12 telephone pursuant to local court rule, to reasonably accommodate a  
13 disability, or in exceptional circumstances to protect a petitioner  
14 from further stalking behavior. The court shall require assurances of  
15 the petitioner's identity before conducting a telephonic hearing.  
16 Except as provided in section 15 of this act, personal service shall be  
17 made upon the respondent not less than five court days prior to the  
18 hearing. If timely personal service cannot be made, the court shall  
19 set a new hearing date and shall require additional attempts at  
20 obtaining personal service or other service as permitted under section  
21 15 of this act. The court may issue an ex parte temporary stalking  
22 order pending the hearing as provided in section 12 of this act.

23 NEW SECTION. **Sec. 7.** No fees for filing or service of process may  
24 be charged by a public agency to petitioners seeking relief under this  
25 chapter. Petitioners shall be provided the necessary number of  
26 certified copies at no cost.

27 NEW SECTION. **Sec. 8.** Victim advocates shall be allowed to  
28 accompany the victim and confer with the victim, unless otherwise  
29 directed by the court. Court administrators shall allow advocates to  
30 assist victims of stalking conduct in the preparation of petitions for  
31 stalking protection orders. Advocates are not engaged in the  
32 unauthorized practice of law when providing assistance of the types  
33 specified in this section.

1        NEW SECTION.    **Sec. 9.**    The court may appoint counsel to represent  
2 the petitioner if the respondent is represented by counsel.

3        NEW SECTION.        **Sec. 10.**        (1)(a) If the court finds by a  
4 preponderance of the evidence that the petitioner has been a victim of  
5 stalking conduct by the respondent, the court shall issue a stalking  
6 protection order; provided that the petitioner must also satisfy the  
7 requirements of section 12 of this act for ex parte temporary orders or  
8 section 13 of this act for final orders.

9        (b) The petitioner shall not be denied a stalking protection order  
10 because the petitioner or the respondent is a minor or because the  
11 petitioner did not report the stalking conduct to law enforcement. The  
12 court, when determining whether or not to issue a stalking protection  
13 order, may not require proof of the respondent's intentions regarding  
14 the acts alleged by the petitioner. Modification and extension of  
15 prior stalking protection orders shall be in accordance with this  
16 chapter.

17        (2) The court may provide relief as follows:

18        (a) Restrain the respondent from having any contact, including  
19 nonphysical contact, with the petitioner directly, indirectly, or  
20 through third parties regardless of whether those third parties know of  
21 the order;

22        (b) Exclude the respondent from the petitioner's residence,  
23 workplace, school, or from the day care or school of the petitioner  
24 and/or the petitioner's minor children;

25        (c) Prohibit the respondent from knowingly coming within, or  
26 knowingly remaining within, a specified distance from a specified  
27 location; and

28        (d) Prohibit the respondent from keeping the petitioner and/or the  
29 petitioner's minor children under surveillance, to include electronic  
30 surveillance; and

31        (e) Order any other injunctive relief as necessary or appropriate  
32 for the protection of the petitioner, to include a mental health and/or  
33 chemical dependency evaluation.

34        (3) In cases where the petitioner and the respondent are under the  
35 age of eighteen and attend the same public or private elementary,  
36 middle, or high school, the court, when issuing a protection order and  
37 providing relief, shall consider, among the other facts of the case,

1 the severity of the act, any continuing physical danger or emotional  
2 distress to the petitioner, and the expense difficulty, and educational  
3 disruption that would be caused by a transfer of the respondent to  
4 another school. The court may order that the person restrained in the  
5 order not attend the public or approved private elementary, middle, or  
6 high school attended by the person under the age of eighteen protected  
7 by the order. In the event the court orders a transfer of the  
8 restrained person to another school, the parents or legal guardians of  
9 the person restrained in the order are responsible for transportation  
10 and other costs associated with the change of school by the person  
11 restrained in the order. The court shall send notice of the  
12 restriction on attending the same school as the person protected by the  
13 order to the public or approved private school the person restrained by  
14 the order will attend and to the school the person protected by the  
15 order attends.

16 NEW SECTION. **Sec. 11.** For the purposes of issuing a stalking  
17 protection order, deciding what relief should be included in the order,  
18 and enforcing the order, RCW 9A.08.020 shall govern whether the  
19 respondent is legally accountable for the conduct of another person.

20 NEW SECTION. **Sec. 12.** (1) An ex parte temporary stalking  
21 protection order shall be issued if the petitioner satisfies the  
22 requirements of this subsection by a preponderance of the evidence.  
23 The petitioner shall establish that:

24 (a) The petitioner has been a victim of stalking conduct by the  
25 respondent; and

26 (b) There is good cause to grant the remedy, regardless of the lack  
27 of prior service of process or of notice upon the respondent, because  
28 the harm which that remedy is intended to prevent would be likely to  
29 occur if the respondent were given any prior notice, or greater notice  
30 than was actually given, of the petitioner's efforts to obtain judicial  
31 relief.

32 (2) If the respondent appears in court for this hearing for an ex  
33 parte temporary order, he or she may elect to file a general appearance  
34 and testify. Any resulting order may be an ex parte temporary order,  
35 governed by this section.

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

5 (4) A knowing violation of a court order issued under this section  
6 is punishable under RCW 26.50.110.

7 NEW SECTION. **Sec. 13.** (1)(a) An ex parte temporary stalking  
8 protection order shall be effective for a fixed period not to exceed  
9 fourteen days. A full hearing, as provided in this chapter, shall be  
10 set for not later than fourteen days from the issuance of the temporary  
11 order. Except as provided in sections 6 and 15 of this act, the  
12 respondent shall be personally served with a copy of the ex parte  
13 temporary stalking protection order along with a copy of the petition  
14 and notice of the date set for the hearing.

15 (b) Any ex parte temporary order issued under this section shall  
16 contain the date and time of issuance and the expiration date and shall  
17 be entered into a statewide judicial information system by the clerk of  
18 the court within one judicial day after issuance.

19 (2) Except as otherwise provided in this section or section 16 of  
20 this act, a final stalking protection order shall be effective for a  
21 fixed period of time, not to exceed five years.

22 (3) Any ex parte temporary or final stalking protection order may  
23 be renewed one or more times. The petitioner may apply for renewal of  
24 the order by filing a petition for renewal at any time within the three  
25 months before the order expires. If the motion for renewal is  
26 uncontested and the petitioner seeks no modification of the order, the  
27 order may be renewed on the basis of the petitioner's motion or  
28 affidavit stating that there has been no material change in relevant  
29 circumstances since entry of the order and stating the reason for the  
30 requested renewal. Renewals may be granted only in open court.

31 (4) Any stalking protection order which would expire on a court  
32 holiday shall instead expire at the close of the next court business  
33 day.

34 (5) The practice of dismissing or suspending a criminal prosecution  
35 in exchange for the issuance of a stalking protection order undermines  
36 the purposes of this chapter. This section shall not be construed as  
37 encouraging that practice.

1        NEW SECTION.    **Sec. 14.**    (1) Any stalking protection order shall  
2 describe each remedy granted by the court, in reasonable detail and not  
3 by reference to any other document, so that the respondent may clearly  
4 understand what he or she must do or refrain from doing.

5        (2) A stalking protection order shall further state the following:

6        (a) The name of each petitioner that the court finds was the victim  
7 of stalking by the respondent;

8        (b) The date and time the stalking protection order was issued,  
9 whether it is an ex parte temporary or final order, and the duration of  
10 the order;

11        (c) The date, time, and place for any scheduled hearing for renewal  
12 of that stalking protection order or for another order of greater  
13 duration or scope;

14        (d) For each remedy in an ex parte temporary stalking protection  
15 order, the reason for entering that remedy without prior notice to the  
16 respondent or greater notice than was actually given;

17        (e) For ex parte temporary stalking protection orders, that the  
18 respondent may petition the court, to reopen the order if he or she did  
19 not receive actual prior notice of the hearing and if the respondent  
20 alleges that he or she had a meritorious defense to the order or that  
21 the order or its remedy is not authorized by this chapter.

22        (3) A stalking protection order shall include the following notice,  
23 printed in conspicuous type: "A knowing violation of this stalking  
24 protection order is a criminal offense under chapter 26.50 RCW and will  
25 subject a violator to arrest. You can be arrested even if any person  
26 protected by the order invites or allows you to violate the order's  
27 prohibitions. You have the sole responsibility to avoid or refrain  
28 from violating the order's provisions. Only the court can change the  
29 order."

30        NEW SECTION.    **Sec. 15.**    (1) An order issued under this chapter  
31 shall be personally served upon the respondent, except as provided in  
32 subsection (6), (7), or (8) of this section.

33        (2) The sheriff of the county or the peace officers of the  
34 municipality in which the respondent resides shall serve the respondent  
35 personally unless the petitioner elects to have the respondent served  
36 by a private party.



1 (3) If service by a sheriff or municipal peace officer is to be  
2 used, the clerk of the court shall have a copy of any order issued  
3 under this chapter forwarded on or before the next judicial day to the  
4 appropriate law enforcement agency specified in the order for service  
5 upon the respondent. Service of an order issued under this chapter  
6 shall take precedence over the service of other documents unless they  
7 are of a similar emergency nature.

8 (4) If the sheriff or municipal peace officer cannot complete  
9 service upon the respondent within ten days, the sheriff or municipal  
10 peace officer shall notify the petitioner. The petitioner shall  
11 provide information sufficient to permit notification.

12 (5) Returns of service under this chapter shall be made in  
13 accordance with the applicable court rules.

14 (6) If an order entered by the court recites that the respondent  
15 appeared in person before the court, the necessity for further service  
16 is waived and proof of service of that order is not necessary.

17 (7) If the respondent was not personally served with the petition,  
18 notice of hearing, and ex parte order before the hearing, the court  
19 shall reset the hearing for twenty-four days from the date of entry of  
20 the order and may order service by publication instead of personal  
21 service under the following circumstances:

22 (a) The sheriff or municipal officer files an affidavit stating  
23 that the officer was unable to complete personal service upon the  
24 respondent. The affidavit must describe the number and types of  
25 attempts the officer made to complete service;

26 (b) The petitioner files an affidavit stating that the petitioner  
27 believes that the respondent is hiding from the server to avoid  
28 service. The petitioner's affidavit must state the reasons for the  
29 belief that the respondent is avoiding service;

30 (c) The server has deposited a copy of the summons, in  
31 substantially the form prescribed in subsection (3) of this section,  
32 notice of hearing, and the ex parte order of protection in the post  
33 office, directed to the respondent at the respondent's last known  
34 address, unless the server states that the server does not know the  
35 respondent's address;

36 (d) The court finds reasonable grounds exist to believe that the  
37 respondent is concealing himself or herself to avoid service, and that

1 further attempts to personally serve the respondent would be futile or  
2 unduly burdensome;

3 (e) The court shall reissue the temporary order of protection not  
4 to exceed another twenty-four days from the date of reissuing the ex  
5 parte protection order and order to provide service by publication; and

6 (f) The publication shall be made in a newspaper of general  
7 circulation in the county where the petition was brought and in the  
8 county of the last known address of the respondent once a week for  
9 three consecutive weeks. The newspaper selected must be one of the  
10 three most widely circulated papers in the county. The publication of  
11 summons shall not be made until the court orders service by publication  
12 under this section. Service of the summons shall be considered  
13 complete when the publication has been made for three consecutive  
14 weeks. The summons must be signed by the petitioner. The summons  
15 shall contain the date of the first publication, and shall require the  
16 respondent upon whom service by publication is desired, to appear and  
17 answer the petition on the date set for the hearing. The summons shall  
18 also contain a brief statement of the reason for the petition and a  
19 summary of the provisions under the ex parte order. The summons shall  
20 be essentially in the following form:

21  
22 In the ..... court of the state of Washington for  
23 the county of .....  
24 ....., Petitioner  
25 vs. No. ....  
26 ....., Respondent  
27 The state of Washington to ..... (respondent):

You are hereby summoned to appear on the . . . . day  
of . . . . ., 20 . . . . , at . . . . a.m./p.m., and respond to the  
petition. If you fail to respond, an order of protection will  
be issued against you pursuant to the provisions of the  
stalking protection order act, chapter 7.-- RCW (the new  
chapter created in section 28 of this act), for a minimum of  
one year from the date you are required to appear. A  
temporary order of protection has been issued against you,  
restraining you from the following: (Insert a brief statement  
of the provisions of the ex parte order.) A copy of the  
petition, notice of hearing, and ex parte order has been filed  
with the clerk of this court.

.....  
Petitioner .....

(8) In circumstances justifying service by publication under  
subsection (7) of this section, if the serving party files an affidavit  
stating facts from which the court determines that service by mail is  
just as likely to give actual notice as service by publication and that  
the serving party is unable to afford the cost of service by  
publication, the court may order that service be made by mail. Such  
service shall be made by any person over eighteen years of age, who is  
competent to be a witness, other than a party, by mailing copies of the  
order and other process to the party to be served at his or her last  
known address or any other address determined by the court to be  
appropriate. Two copies shall be mailed, postage prepaid, one by  
ordinary first-class mail and the other by a form of mail requiring a  
signed receipt showing when and to whom it was delivered. The  
envelopes must bear the return address of the sender.

(a) Proof of service under this section shall be consistent with  
court rules for civil proceedings.

(b) Service under this section may be used in the same manner and  
shall have the same jurisdictional effect as service by publication for  
purposes of this chapter. Service shall be deemed complete upon the  
mailing of two copies as prescribed in this section.

**NEW SECTION. Sec. 16.** (1)(a) When any person charged with or  
arrested for stalking as defined in RCW 9A.46.110, telephone harassment

1 as defined in RCW 9.61.230, and cyberstalking as defined in RCW  
2 9.61.260 is released from custody before arraignment or trial on bail  
3 or personal recognizance, the court authorizing the release may  
4 prohibit that person from having any contact with the victim. The  
5 jurisdiction authorizing the release shall determine whether that  
6 person should be prohibited from having any contact with the victim.  
7 If there is no outstanding restraining or protective order prohibiting  
8 that person from having contact with the victim, the court authorizing  
9 release may issue, by telephone, a stalking protection order  
10 prohibiting the person charged or arrested from having contact with the  
11 victim or from knowingly coming within, or knowingly remaining within,  
12 a specified distance of a location.

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

15 (c) The stalking protection order shall also be issued in writing  
16 as soon as possible.

17 (2)(a) At the time of arraignment or whenever a motion is brought  
18 to modify the conditions of the defendant's release, the court shall  
19 determine whether a stalking protection order shall be issued or  
20 extended. If a stalking protection order is issued or extended, the  
21 court may also include in the conditions of release a requirement that  
22 the defendant submit to electronic monitoring, including real-time  
23 global position satellite monitoring with victim notification. If  
24 electronic monitoring is ordered, the court shall specify who shall  
25 provide the monitoring services, and the terms under which the  
26 monitoring shall be performed. Upon conviction, the court may require  
27 as a condition of the sentence that the defendant reimburse the  
28 providing agency for the costs of the electronic monitoring, including  
29 costs relating to real-time global position satellite monitoring with  
30 victim notification.

31 (b) A stalking protection order issued by the court in conjunction  
32 with criminal charges shall terminate if the defendant is acquitted or  
33 the charges are dismissed, unless the victim files an independent  
34 action for a stalking protection order. If the victim files an  
35 independent action for a stalking protection order, the order may be  
36 continued by the court until a full hearing is conducted pursuant to  
37 section 6 of this act.

1 (3)(a) The written order releasing the person charged or arrested  
2 shall contain the court's directives and shall bear the legend:  
3 "Violation of this order is a criminal offense under chapter 26.50 RCW  
4 and will subject a violator to arrest. You can be arrested even if any  
5 person protected by the order invites or allows you to violate the  
6 order's prohibitions. You have the sole responsibility to avoid or  
7 refrain from violating the order's provisions. Only the court can  
8 change the order."

9 (b) A certified copy of the order shall be provided to the victim  
10 at no charge.

11 (4) If a stalking protection order has been issued prior to  
12 charging, that order shall expire at arraignment or within seventy-two  
13 hours if charges are not filed.

14 (5) Whenever an order prohibiting contact is issued pursuant to  
15 subsection (2) of this section, the clerk of the court shall forward a  
16 copy of the order on or before the next judicial day to the appropriate  
17 law enforcement agency specified in the order. Upon receipt of the  
18 copy of the order, the law enforcement agency shall enter the order for  
19 one year or until the expiration date specified on the order into any  
20 computer-based criminal intelligence information system available in  
21 this state used by law enforcement agencies to list outstanding  
22 warrants. Entry into the computer-based criminal intelligence  
23 information system constitutes notice to all law enforcement agencies  
24 of the existence of the order. The order is fully enforceable in any  
25 jurisdiction in the state.

26 (6)(a) When a defendant is found guilty of stalking as defined in  
27 RCW 9A.46.110, harassment as defined in RCW 9A.46.020, or any other  
28 stalking related offense under RCW 9A.46.060 and a condition of the  
29 sentence restricts the defendant's ability to have contact with the  
30 victim, the condition shall be recorded as a stalking protection order.

31 (b) The written order entered as a condition of sentencing shall  
32 contain the court's directives and shall bear the legend: "Violation  
33 of this order is a criminal offense under chapter 26.50 RCW and will  
34 subject a violator to arrest. You can be arrested even if any person  
35 protected by the order invites or allows you to violate the order's  
36 prohibitions. You have the sole responsibility to avoid or refrain  
37 from violating the order's provisions. Only the court can change the  
38 order."

1 (c) A final stalking protection order entered in conjunction with  
2 a criminal prosecution shall remain in effect for a period of five  
3 years following the expiration of any sentence of imprisonment and  
4 subsequent period of community supervision, conditional release,  
5 probation, or parole.

6 (d) A certified copy of the order shall be provided to the victim  
7 at no charge.

8 (7) A knowing violation of a court order issued under subsection  
9 (1), (2), or (6) of this section is punishable under RCW 26.50.110.

10 (8) Whenever a stalking protection order is issued, modified, or  
11 terminated under subsection (1), (2), or (6) of this section, the clerk  
12 of the court shall forward a copy of the order on or before the next  
13 judicial day to the appropriate law enforcement agency specified in the  
14 order. Upon receipt of the copy of the order, the law enforcement  
15 agency shall enter the order for one year or until the expiration date  
16 specified on 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 jurisdiction in the state. Upon receipt of notice  
22 that an order has been terminated under subsection (2) of this section,  
23 the law enforcement agency shall remove the order from the  
24 computer-based criminal intelligence information system.

25 NEW SECTION. **Sec. 17.** (1) In a proceeding in which a petition for  
26 a stalking protection order is sought under this chapter, a court of  
27 this state may exercise personal jurisdiction over a nonresident  
28 individual if:

29 (a) The individual is personally served with a petition within this  
30 state;

31 (b) The individual submits to the jurisdiction of this state by  
32 consent, entering a general appearance, or filing a responsive document  
33 having the effect of waiving any objection to consent to personal  
34 jurisdiction;

35 (c) The act or acts of the individual or the individual's agent  
36 giving rise to the petition or enforcement of a stalking protection  
37 order occurred within this state;

1 (d)(i) The act or acts of the individual or the individual's agent  
2 giving rise to the petition or enforcement of a stalking protection  
3 order occurred outside this state and are part of an ongoing pattern of  
4 stalking behavior that has an adverse effect on the petitioner or a  
5 member of the petitioner's family or household and the petitioner  
6 resides in this state; or

7 (ii) As a result of acts of stalking behavior, the petitioner or a  
8 member of the petitioner's family or household has sought safety or  
9 protection in this state and currently resides in this state; or

10 (e) There is any other basis consistent with RCW 4.28.185 or with  
11 the Constitution of this state and the Constitution of the United  
12 States.

13 (2) For jurisdiction to be exercised under subsection (1)(d)(i) or  
14 (ii) of this section, the individual must have communicated with the  
15 petitioner or a member of the petitioner's family, directly or  
16 indirectly, or made known a threat to the safety of the petitioner or  
17 member of the petitioner's family while the petitioner or family member  
18 resides in this state. For the purposes of subsection (1)(d)(i) or  
19 (ii) of this section, "communicated or made known" includes, but is not  
20 limited to, through the mail, telephonically, or a posting on an  
21 electronic communication site or medium. Communication on any  
22 electronic medium that is generally available to any individual  
23 residing in the state shall be sufficient to exercise jurisdiction  
24 under subsection (1)(d)(i) or (ii) of this section.

25 (3) For the purposes of this section, an act or acts that "occurred  
26 within this state" includes, but is not limited to, an oral or written  
27 statement made or published by a person outside of this state to any  
28 person in this state by means of the mail, interstate commerce, or  
29 foreign commerce. Oral or written statements sent by electronic mail  
30 or the internet are deemed to have "occurred within this state."

31 NEW SECTION. **Sec. 18.** (1) A copy of a stalking protection order  
32 granted under this chapter shall be forwarded by the clerk of the court  
33 on or before the next judicial day to the appropriate law enforcement  
34 agency specified in the order. Upon receipt of the order, the law  
35 enforcement agency shall immediately enter the order into any  
36 computer-based criminal intelligence information system available in  
37 this state used by law enforcement agencies to list outstanding

1 warrants. The order shall remain in the computer for one year or until  
2 the expiration date specified on the order. Upon receipt of notice  
3 that an order has been terminated, the law enforcement agency shall  
4 remove the order from the computer-based criminal intelligence  
5 information system. The law enforcement agency shall only expunge from  
6 the computer-based criminal intelligence information system orders that  
7 are expired, vacated, terminated, or superseded. Entry into the law  
8 enforcement information system constitutes notice to all law  
9 enforcement agencies of the existence of the order. The order is fully  
10 enforceable in any county in the state.

11 (2) The information entered into the computer-based criminal  
12 intelligence information system shall include notice to law enforcement  
13 whether the order was personally served, served by publication, or  
14 served by mail.

15 NEW SECTION. **Sec. 19.** Upon application with notice to all parties  
16 and after a hearing, the court may modify the terms of an existing  
17 stalking protection order. In any situation where an order is  
18 terminated or modified before its expiration date, the clerk of the  
19 court shall forward on or before the next judicial day a true copy of  
20 the modified order or the termination order to the appropriate law  
21 enforcement agency specified in the modified or termination order.  
22 Upon receipt of the order, the law enforcement agency shall promptly  
23 enter it in the computer-based criminal intelligence information  
24 system, or if the order is terminated, remove the order from the  
25 computer-based criminal intelligence information system.

26 NEW SECTION. **Sec. 20.** An ex parte temporary order issued under  
27 this chapter shall not be admissible as evidence in any subsequent  
28 civil action for damages arising from the conduct alleged in the  
29 petition or the order.

30 NEW SECTION. **Sec. 21.** Nothing in this chapter shall be construed  
31 as requiring criminal charges to be filed as a condition of a stalking  
32 protection order being issued.

33 NEW SECTION. **Sec. 22.** This act may be known and cited as the  
34 stalking protection order act.



1       **Sec. 23.** RCW 9.94A.535 and 2011 c 87 s 1 are each amended to read  
2 as follows:

3       The court may impose a sentence outside the standard sentence range  
4 for an offense if it finds, considering the purpose of this chapter,  
5 that there are substantial and compelling reasons justifying an  
6 exceptional sentence. Facts supporting aggravated sentences, other  
7 than the fact of a prior conviction, shall be determined pursuant to  
8 the provisions of RCW 9.94A.537.

9       Whenever a sentence outside the standard sentence range is imposed,  
10 the court shall set forth the reasons for its decision in written  
11 findings of fact and conclusions of law. A sentence outside the  
12 standard sentence range shall be a determinate sentence.

13       If the sentencing court finds that an exceptional sentence outside  
14 the standard sentence range should be imposed, the sentence is subject  
15 to review only as provided for in RCW 9.94A.585(4).

16       A departure from the standards in RCW 9.94A.589 (1) and (2)  
17 governing whether sentences are to be served consecutively or  
18 concurrently is an exceptional sentence subject to the limitations in  
19 this section, and may be appealed by the offender or the state as set  
20 forth in RCW 9.94A.585 (2) through (6).

21       (1) Mitigating Circumstances - Court to Consider

22       The court may impose an exceptional sentence below the standard  
23 range if it finds that mitigating circumstances are established by a  
24 preponderance of the evidence. The following are illustrative only and  
25 are not intended to be exclusive reasons for exceptional sentences.

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

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

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

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

36       (e) The defendant's capacity to appreciate the wrongfulness of his  
37 or her conduct, or to conform his or her conduct to the requirements of

1 the law, was significantly impaired. Voluntary use of drugs or alcohol  
2 is excluded.

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

6 (g) The operation of the multiple offense policy of RCW 9.94A.589  
7 results in a presumptive sentence that is clearly excessive in light of  
8 the purpose of this chapter, as expressed in RCW 9.94A.010.

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

12 (i) The defendant was making a good faith effort to obtain or  
13 provide medical assistance for someone who is experiencing a drug-  
14 related overdose.

15 (j) The current offense involved domestic violence, as defined in  
16 RCW 10.99.020, and the defendant suffered a continuing pattern of  
17 coercion, control, or abuse by the victim of the offense and the  
18 offense is a response to that coercion, control, or abuse.

19 (2) Aggravating Circumstances - Considered and Imposed by the Court  
20 The trial court may impose an aggravated exceptional sentence  
21 without a finding of fact by a jury under the following circumstances:

22 (a) The defendant and the state both stipulate that justice is best  
23 served by the imposition of an exceptional sentence outside the  
24 standard range, and the court finds the exceptional sentence to be  
25 consistent with and in furtherance of the interests of justice and the  
26 purposes of the sentencing reform act.

27 (b) The defendant's prior unscored misdemeanor or prior unscored  
28 foreign criminal history results in a presumptive sentence that is  
29 clearly too lenient in light of the purpose of this chapter, as  
30 expressed in RCW 9.94A.010.

31 (c) The defendant has committed multiple current offenses and the  
32 defendant's high offender score results in some of the current offenses  
33 going unpunished.

34 (d) The failure to consider the defendant's prior criminal history  
35 which was omitted from the offender score calculation pursuant to RCW  
36 9.94A.525 results in a presumptive sentence that is clearly too  
37 lenient.

1 (3) Aggravating Circumstances - Considered by a Jury -Imposed by  
2 the Court

3 Except for circumstances listed in subsection (2) of this section,  
4 the following circumstances are an exclusive list of factors that can  
5 support a sentence above the standard range. Such facts should be  
6 determined by procedures specified in RCW 9.94A.537.

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

9 (b) The defendant knew or should have known that the victim of the  
10 current offense was particularly vulnerable or incapable of resistance.

11 (c) The current offense was a violent offense, and the defendant  
12 knew that the victim of the current offense was pregnant.

13 (d) The current offense was a major economic offense or series of  
14 offenses, so identified by a consideration of any of the following  
15 factors:

16 (i) The current offense involved multiple victims or multiple  
17 incidents per victim;

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

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

22 (iv) The defendant used his or her position of trust, confidence,  
23 or fiduciary responsibility to facilitate the commission of the current  
24 offense.

25 (e) The current offense was a major violation of the Uniform  
26 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to  
27 trafficking in controlled substances, which was more onerous than the  
28 typical offense of its statutory definition: The presence of ANY of  
29 the following may identify a current offense as a major VUCSA:

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

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

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

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

3 (v) The current offense involved a high degree of sophistication or  
4 planning, occurred over a lengthy period of time, or involved a broad  
5 geographic area of disbursement; or

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

10 (f) The current offense included a finding of sexual motivation  
11 pursuant to RCW 9.94A.835.

12 (g) The offense was part of an ongoing pattern of sexual abuse of  
13 the same victim under the age of eighteen years manifested by multiple  
14 incidents over a prolonged period of time.

15 (h) The current offense involved domestic violence, as defined in  
16 RCW 10.99.020, or stalking, as defined in RCW 9A.46.110, and one or  
17 more of the following was present:

18 (i) The offense was part of an ongoing pattern of psychological,  
19 physical, or sexual abuse of a victim or multiple victims manifested by  
20 multiple incidents over a prolonged period of time;

21 (ii) The offense occurred within sight or sound of the victim's or  
22 the offender's minor children under the age of eighteen years; or

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

25 (i) The offense resulted in the pregnancy of a child victim of  
26 rape.

27 (j) The defendant knew that the victim of the current offense was  
28 a youth who was not residing with a legal custodian and the defendant  
29 established or promoted the relationship for the primary purpose of  
30 victimization.

31 (k) The offense was committed with the intent to obstruct or impair  
32 human or animal health care or agricultural or forestry research or  
33 commercial production.

34 (l) The current offense is trafficking in the first degree or  
35 trafficking in the second degree and any victim was a minor at the time  
36 of the offense.

37 (m) The offense involved a high degree of sophistication or  
38 planning.

1 (n) The defendant used his or her position of trust, confidence, or  
2 fiduciary responsibility to facilitate the commission of the current  
3 offense.

4 (o) The defendant committed a current sex offense, has a history of  
5 sex offenses, and is not amenable to treatment.

6 (p) The offense involved an invasion of the victim's privacy.

7 (q) The defendant demonstrated or displayed an egregious lack of  
8 remorse.

9 (r) The offense involved a destructive and foreseeable impact on  
10 persons other than the victim.

11 (s) The defendant committed the offense to obtain or maintain his  
12 or her membership or to advance his or her position in the hierarchy of  
13 an organization, association, or identifiable group.

14 (t) The defendant committed the current offense shortly after being  
15 released from incarceration.

16 (u) The current offense is a burglary and the victim of the  
17 burglary was present in the building or residence when the crime was  
18 committed.

19 (v) The offense was committed against a law enforcement officer who  
20 was performing his or her official duties at the time of the offense,  
21 the offender knew that the victim was a law enforcement officer, and  
22 the victim's status as a law enforcement officer is not an element of  
23 the offense.

24 (w) The defendant committed the offense against a victim who was  
25 acting as a good samaritan.

26 (x) The defendant committed the offense against a public official  
27 or officer of the court in retaliation of the public official's  
28 performance of his or her duty to the criminal justice system.

29 (y) The victim's injuries substantially exceed the level of bodily  
30 harm necessary to satisfy the elements of the offense. This aggravator  
31 is not an exception to RCW 9.94A.530(2).

32 (z)(i)(A) The current offense is theft in the first degree, theft  
33 in the second degree, possession of stolen property in the first  
34 degree, or possession of stolen property in the second degree; (B) the  
35 stolen property involved is metal property; and (C) the property damage  
36 to the victim caused in the course of the theft of metal property is  
37 more than three times the value of the stolen metal property, or the  
38 theft of the metal property creates a public hazard.

1 (ii) For purposes of this subsection, "metal property" means  
2 commercial metal property, private metal property, or nonferrous metal  
3 property, as defined in RCW 19.290.010.

4 (aa) The defendant committed the offense with the intent to  
5 directly or indirectly cause any benefit, aggrandizement, gain, profit,  
6 or other advantage to or for a criminal street gang as defined in RCW  
7 9.94A.030, its reputation, influence, or membership.

8 (bb) The current offense involved paying to view, over the internet  
9 in violation of RCW 9.68A.075, depictions of a minor engaged in an act  
10 of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through  
11 (g).

12 (cc) The offense was intentionally committed because the defendant  
13 perceived the victim to be homeless, as defined in RCW 9.94A.030.

14 **Sec. 24.** RCW 9A.46.040 and 2011 c 307 s 4 are each amended to read  
15 as follows:

16 (1) Because of the likelihood of repeated harassment directed at  
17 those who have been victims of harassment in the past, when any  
18 defendant charged with a crime involving harassment is released from  
19 custody before trial on bail or personal recognizance, the court  
20 authorizing the release may issue an order pursuant to this chapter and  
21 require that the defendant:

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

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

30 (2) An intentional violation of a court order issued under this  
31 section or an equivalent local ordinance is a misdemeanor. The written  
32 order releasing the defendant shall contain the court's directives and  
33 shall bear the legend: Violation of this order is a criminal offense  
34 under chapter 9A.46 RCW. A certified copy of the order shall be  
35 provided to the victim by the clerk of the court.

36 (3) If the defendant is charged with the crime of stalking, and the

1 court issues an order protecting the victim, the court shall issue a  
2 stalking protection order pursuant to chapter 7.-- RCW (the new chapter  
3 created in section 28 of this act).

4 NEW SECTION. Sec. 25. A new section is added to chapter 9A.46 RCW  
5 to read as follows:

6 (1) A defendant arrested for stalking as defined by RCW 9A.46.110  
7 shall be required to appear in person before a magistrate within one  
8 judicial day after the arrest.

9 (2) At the time of appearance provided in subsection (1) of this  
10 section the court shall determine the necessity of imposing a stalking  
11 protection order under chapter 7.-- RCW (the new chapter created in  
12 section 28 of this act).

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

15 (4) The stalking protection order shall be issued and entered with  
16 the appropriate law enforcement agency pursuant to the procedures  
17 outlined in chapter 7.-- RCW (the new chapter created in section 28 of  
18 this act).

19 **Sec. 26.** RCW 9A.46.110 and 2007 c 201 s 1 are each amended to read  
20 as follows:

21 (1) A person commits the crime of stalking if, without lawful  
22 authority and under circumstances not amounting to a felony attempt of  
23 another crime:

24 (a) He or she intentionally and repeatedly harasses or repeatedly  
25 follows another person; and

26 (b) The person being harassed or followed is placed in fear that  
27 the stalker intends to injure the person, another person, or property  
28 of the person or of another person. The feeling of fear must be one  
29 that a reasonable person in the same situation would experience under  
30 all the circumstances; and

31 (c) The stalker either:

32 (i) Intends to frighten, intimidate, or harass the person; or

33 (ii) Knows or reasonably should know that the person is afraid,  
34 intimidated, or harassed even if the stalker did not intend to place  
35 the person in fear or intimidate or harass the person.

1 (2)(a) It is not a defense to the crime of stalking under  
2 subsection (1)(c)(i) of this section that the stalker was not given  
3 actual notice that the person did not want the stalker to contact or  
4 follow the person; and

5 (b) It is not a defense to the crime of stalking under subsection  
6 (1)(c)(ii) of this section that the stalker did not intend to frighten,  
7 intimidate, or harass the person.

8 (3) It shall be a defense to the crime of stalking that the  
9 defendant is a licensed private investigator acting within the capacity  
10 of his or her license as provided by chapter 18.165 RCW.

11 (4) Attempts to contact or follow the person after being given  
12 actual notice that the person does not want to be contacted or followed  
13 constitutes prima facie evidence that the stalker intends to intimidate  
14 or harass the person. "Contact" includes, in addition to any other  
15 form of contact or communication, the sending of an electronic  
16 communication to the person.

17 (5)(a) Except as provided in (b) of this subsection, a person who  
18 stalks another person is guilty of a gross misdemeanor.

19 (b) A person who stalks another is guilty of a class ((C)) B felony  
20 if any of the following applies: (i) The stalker has previously been  
21 convicted in this state or any other state of any crime of harassment,  
22 as defined in RCW 9A.46.060, of the same victim or members of the  
23 victim's family or household or any person specifically named in a  
24 protective order; (ii) the stalking violates any protective order  
25 protecting the person being stalked; (iii) the stalker has previously  
26 been convicted of a gross misdemeanor or felony stalking offense under  
27 this section for stalking another person; (iv) the stalker was armed  
28 with a deadly weapon, as defined in RCW ((~~9.94A.602~~)) 9.94A.825, while  
29 stalking the person; (v)(A) the stalker's victim is or was a law  
30 enforcement officer; judge; juror; attorney; victim advocate;  
31 legislator; community corrections' officer; an employee, contract staff  
32 person, or volunteer of a correctional agency; court employee, court  
33 clerk, or courthouse facilitator; or an employee of the child  
34 protective, child welfare, or adult protective services division within  
35 the department of social and health services; and (B) the stalker  
36 stalked the victim to retaliate against the victim for an act the  
37 victim performed during the course of official duties or to influence  
38 the victim's performance of official duties; or (vi) the stalker's



1 victim is a current, former, or prospective witness in an adjudicative  
2 proceeding, and the stalker stalked the victim to retaliate against the  
3 victim as a result of the victim's testimony or potential testimony.

4 (6) As used in this section:

5 (a) "Correctional agency" means a person working for the department  
6 of natural resources in a correctional setting or any state, county, or  
7 municipally operated agency with the authority to direct the release of  
8 a person serving a sentence or term of confinement and includes but is  
9 not limited to the department of corrections, the indeterminate  
10 sentence review board, and the department of social and health  
11 services.

12 (b) "Follows" means deliberately maintaining visual or physical  
13 proximity to a specific person over a period of time. A finding that  
14 the alleged stalker repeatedly and deliberately appears at the person's  
15 home, school, place of employment, business, or any other location to  
16 maintain visual or physical proximity to the person is sufficient to  
17 find that the alleged stalker follows the person. It is not necessary  
18 to establish that the alleged stalker follows the person while in  
19 transit from one location to another.

20 (c) "Harasses" means unlawful harassment as defined in RCW  
21 10.14.020.

22 (d) "Protective order" means any temporary or permanent court order  
23 prohibiting or limiting violence against, harassment of, contact or  
24 communication with, or physical proximity to another person.

25 (e) "Repeatedly" means on two or more separate occasions.

26 **Sec. 27.** RCW 10.14.070 and 2005 c 144 s 1 are each amended to read  
27 as follows:

28 Upon receipt of the petition alleging a prima facie case of  
29 harassment, other than a petition alleging a sex offense as defined in  
30 chapter 9A.44 RCW or a petition for a stalking protection order under  
31 chapter 7.-- RCW (the new chapter created in section 28 of this act),  
32 the court shall order a hearing which shall be held not later than  
33 fourteen days from the date of the order. If the petition alleges a  
34 sex offense as defined in chapter 9A.44 RCW, the court shall order a  
35 hearing which shall be held not later than fourteen days from the date  
36 of the order. Except as provided in RCW 10.14.085, personal service  
37 shall be made upon the respondent not less than five court days before

1 the hearing. If timely personal service cannot be made, the court  
2 shall set a new hearing date and shall either require additional  
3 attempts at obtaining personal service or permit service by publication  
4 as provided by RCW 10.14.085. If the court permits service by  
5 publication, the court shall set the hearing date not later than  
6 twenty-four days from the date of the order. The court may issue an ex  
7 parte order for protection pending the hearing as provided in RCW  
8 10.14.080 and 10.14.085.

9 NEW SECTION. **Sec. 28.** Sections 1 through 22 of this act  
10 constitute a new chapter in Title 7 RCW.

--- END ---