

SENATE BILL REPORT

E2SHB 1715

As Reported by Senate Committee On:
Law & Justice, March 22, 2023

Title: An act relating to enacting comprehensive protections for victims of domestic violence and other violence involving family members or intimate partners.

Brief Description: Enacting comprehensive protections for victims of domestic violence and other violence involving family members or intimate partners.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Davis, Mosbrucker, Duerr, Griffey, Walen, Lekanoff, Morgan, Callan, Ramel, Thai, Rule, Ryu, Kloba, Chopp, Pollet, Chapman, Mena, Cortes, Eslick, Bergquist and Fey).

Brief History: Passed House: 3/7/23, 69-25.

Committee Activity: Law & Justice: 3/16/23, 3/22/23 [DPA-WM, DNP, w/oRec].

Brief Summary of Amended Bill

- Requires the adoption of rules on electronic monitoring with victim notification technology.
- Requires the development of plans to expand access to attorneys for victims of domestic violence in state and tribal courts.
- Makes changes to civil protection orders.
- Makes changes to provisions regarding crimes of domestic violence.
- Makes changes to the firearms or dangerous weapons surrender process.
- Makes changes to the Address Confidentiality Program and personal financial affairs reports filed with the Public Disclosure Commission.
- Creates a grant program for a statewide prosecutor for domestic violence cases.
- Creates a pilot program for domestic violence high-risk teams.

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

- Expands training for law enforcement and judicial officers regarding domestic violence.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen, Salomon and Valdez.

Minority Report: Do not pass.

Signed by Senators McCune and Wagoner.

Minority Report: That it be referred without recommendation.

Signed by Senators Padden, Ranking Member; Torres and Wilson, L..

Staff: Tim Ford (786-7423)

Background: Civil Protection Orders. There are different types of civil protection orders a court may issue to protect a person from the behavior of another. Separate types of protection orders exist for domestic violence, sexual assault, harassment, stalking, and vulnerable adult abuse. A court may issue an extreme risk protection order to prohibit a person who poses a significant risk of harm to self or others from possessing, purchasing, accessing, or receiving a firearm.

Temporary Orders. For most types of protection orders, where it appears the respondent has engaged in conduct against the petitioner that serves as a basis for a protection order and the petitioner alleges that serious immediate harm or irreparable injury could result if an order is not issued immediately, the court may grant an ex parte temporary protection order, pending a full hearing. After a hearing, the court may issue a full protection order.

Service of the Order. After a court grants an order, if service of the order by law enforcement is required, the court must forward the order and supporting materials to the relevant law enforcement agency before the next judicial day. The law enforcement agency must give precedence to serving the order over other documents not of a similar emergency nature. When personal service is required, the law enforcement agency must attempt to serve the order within 24 hours when practicable, but not more than five days after receiving the order.

Judicial Officer Training. Judicial officers are encouraged to complete training on the unique nature of protection order proceedings, including evidence-based training on procedural justice, trauma informed practices, gender-based violence dynamics, coercive control, elder abuse, juvenile sex offending, teen dating violence, and the requirements for

the surrender of weapons. The trainings should be provided on an ongoing basis as best practices, research on trauma, and legislation continue to evolve.

Crimes of Domestic Violence. A person arrested for an offense involving domestic violence must appear in front of a magistrate within one judicial day after arrest. If the defendant is released before arraignment or trial, the court may prohibit the defendant from having contact with the victim. In issuing the order, the court must consider ordering the defendant to surrender all firearms, dangerous weapons, or any concealed pistol license.

At arraignment, the court must determine whether a no-contact order should be issued or extended. In issuing the order, the court may order the defendant to immediately surrender all firearms and any concealed pistol license to law enforcement upon release. The court may also require the defendant to submit to electronic monitoring. Upon conviction, the defendant may be ordered to reimburse the agency that provides the electronic monitoring.

Surrender of Firearms or Dangerous Weapons. *Orders to Surrender Firearms or Dangerous Weapons.* A court may order a person to surrender firearms, dangerous weapons, or a concealed pistol license as part of a protection order or no-contact order. In some instances, such an order is mandatory. The order may last for any period of time up to the duration of the order.

Law enforcement must emphasize swift and certain compliance with court orders prohibiting access, possession, and ownership of all firearms. A law enforcement officer serving an order that includes the surrender of firearms, dangerous weapons, or a concealed pistol license must inform the respondent the order is effective immediately, conduct a search as permitted by law, and take possession of all firearms, dangerous weapons, and any concealed pistol license belonging to the respondent surrendered, in plain sight, or discovered via lawful search.

Compliance Hearings. A court must conduct a compliance hearing as soon as possible after receiving notice from enforcement of proof of service. At the hearing, the respondent must appear and provide proof of compliance with the court order. A compliance review hearing is not necessary if there is a sufficient showing—through attestation by the respondent, law enforcement verification, and other relevant evidence—that the person has timely and completely complied with the order.

A person in noncompliance with an order to surrender firearms, dangerous weapons, or a concealed pistol license is subject to contempt of court sanctions.

Timing of Surrender. If the respondent was present at the hearing, the surrender must occur on the same day as the hearing. If the respondent was not present at the hearing, and personal service by a law enforcement officer is not possible, surrender must occur within 24 hours of alternate service. A party ordered to surrender firearms, dangerous weapons, or a concealed pistol license must file with the court proof of surrender and receipt or a

declaration of nonsurrender within five days of the entry of the order.

Notification. Law enforcement agencies must develop a notification protocol that allows a family or household member or intimate partner to use an incident or case number to request to be notified when a law enforcement returns a privately owned firearm to the individual from whom it was obtained. The notification may be made by telephone, email, text message, or another method that allows notification to be provided without unnecessary delay. The notification must occur within one business day of a law enforcement agency determining the firearm must be returned. The law enforcement agency may hold the firearm in custody for 72 hours after the notification has been provided.

Residential Protections. *The Address Confidentiality Program.* The Address Confidentiality Program is a program through which a victim of domestic violence, sexual assault, trafficking, or stalking may apply to the Secretary of State to utilize an address designated by the Secretary of State in government records. The program may also be utilized by family members residing with the applicant.

Personal Financial Affairs Reporting for Government Officials. Elected officials, certain appointed state officials, charter school directors, and professional staff in the Legislature and the Governor's office must file an annual statement of financial affairs with the Public Disclosure Commission, otherwise known as an F-1. Although a filer's residential address is not included on an F-1 form, the addresses of properties owned by the filer or a family member are included. Judges, prosecutors, sheriffs, and their immediate family members are allowed to provide alternate descriptions of real property on their F-1 forms.

Law Enforcement Training. As part of the basic law enforcement curriculum, the Criminal Justice Training Commission (CJTC) must include at least 20 hours of training on the law enforcement response to domestic violence. The training must include material on the extent and prevalence of domestic violence, the importance of criminal justice intervention, techniques for responding that minimize the risk of officer injury and promote victim safety, investigation and interviewing skills, evidence gathering and report writing, assistance and services for victims and children, verification and enforcement of court orders, and liability. CJTC must also develop and update an in-service training program to familiarize law enforcement officers with domestic violence laws.

The Automated Notification Systems. The Washington Association of Sheriffs and Police Chiefs (WASPC) operates the Statewide Automated Protected Person Notification System to automatically notify a registered person via the person's choice of telephone or email when a respondent subject to a court order has attempted to purchase or acquire a firearm and been denied based on a background check or transfer application that indicates the respondent is ineligible to possess a firearm under state or federal law. WASPC also operates the Statewide Automated Victim Information and Notification System to notify a victim upon the occurrence of specified events involving an offender housed in any state, city, or county correctional facility.

Summary of Amended Bill: Electronic Monitoring with Victim Notification Technology. CJTC must adopt rules on electronic monitoring with victim notification technology (EMVNT) by December 1, 2023. CJTC must solicit input from courts, local governments, monitoring agencies, and statewide associations representing law enforcement leaders, prosecutors, domestic violence victims, and domestic violence agencies. The rules must:

- establish standards for the operation of EMVNT by monitoring agencies, with the goal of implementing best practices to improve victim safety;
- establish protocols for implementing court orders that include EMVNT, including protocols for the installation and removal of monitoring devices to ensure uninterrupted monitoring services following release from detainment or incarceration; and
- establish any additional requirements necessary to promote compliance with statutory electronic monitoring requirements, which may include training requirements for court officials, peace officers, 911 dispatchers, local corrections officers and staff, and other appropriate practitioners.

CJTC must also develop a model policy on EMVNT based on best practices where the technology is currently being used in Washington. Each law enforcement agency in the state must adopt its own policy based on the model policy.

Access to Legal Counsel. By September 30, 2024, the Office of Civil Legal Aid (OCLA) must propose a plan to standardize and expand statewide access to civil legal assistance for survivors of domestic violence in protection order proceedings initiated in superior and district courts and in family law proceedings. The plan must focus on:

- how deployment of publicly funded attorneys could integrate with existing networks of community and non-profit organizations already providing support for domestic violence survivors;
- strategies for expanding the number of private attorneys available to provide effective civil legal representation to domestic violence survivors;
- strategies for incorporating high-quality, culturally responsive, equity and trauma informed assistance by non-attorneys into delivery systems;
- a proposed implementation schedule and priorities; provisions to ensure effective training, support, technical, and other assistance to ensure equity and trauma-informed legal assistance targeted to survivors at greatest risk of lethal and other aggravated harms;
- training for the courts to differentiate between victims who may need civil legal assistance, and abusers who may allege to be victims to secure civil legal assistance;
- any statutory changes necessary to implement the plan; and
- any other information deemed appropriate by the OCLA.

Subject to appropriated funds, OCLA must coordinate with the Indian Policy Advisory Council and representatives of tribal justice systems to develop a plan and implementation schedule to provide indigenous-informed, culturally competent legal support to survivors in tribal court domestic violence protection proceedings. OCLA must submit its plan to the

Legislature by December 1, 2024.

Civil Proceedings. Temporary Orders. In any proceeding in which the court enters a temporary protection order that includes a temporary order to surrender and prohibit weapons, and after the hearing the court denies the petition for a full protection order, the order to surrender and prohibit weapons stays in effect during the period within which the petitioner may file a motion for reconsideration or revision. If the petitioner files such a motion, the order to surrender and prohibit weapons stays in effect until the motion is resolved. The court must notify the petitioner verbally and provide the petitioner with written information at the hearing explaining the procedures and timelines for filing a motion for reconsideration or a motion for revision. The information must also include contact information for civil legal aid organizations that may assist the petitioner.

Service of the Order. The first attempt at service of an order must occur within 24 hours unless an emergency situation renders service infeasible.

Judicial Officer Training. The training that judicial officers are encouraged to complete must include material on domestic violence homicide prevention and best practices for the surrender of weapons. The Administrative Office for the Courts (AOC) must develop training in all required topics, which must be provided free of charge to judicial officers.

Crimes of Domestic Violence. In a domestic violence proceeding, a court may not deny a no-contact order based on the existence of an applicable civil protection order preventing the defendant from contacting the victim. If a defendant enters into a deferred prosecution or stipulated order of continuance, the applicable order or agreement may require the defendant pay the costs of electronic monitoring.

Surrender of Firearms or Dangerous Weapons. Criminal Sentencing. In any criminal proceeding, when determining conditions of release, a judicial officer must consider the defendant's firearms history.

Compliance Hearings. Prosecutors may submit written information for purposes of verifying compliance with an order to surrender firearms or dangerous weapons. If the court finds that a person is in noncompliance with an order to surrender firearms or dangerous weapons, it may issue an arrest warrant.

Timing of Surrender. A person ordered to surrender firearms, dangerous weapons, or a concealed pistol license as part of a criminal proceeding must file with the court proof of surrender and receipt or a declaration of non-surrender prior to release from confinement or before the conclusion of the hearing, instead of within five days.

Notification. Subject to appropriated funds, WASPC must create and maintain an electronic portal for law enforcement to enter when any respondent identified in a no-contact order, restraining order, or protection order has met the requirements to be notified when a

surrendered firearm is returned. The portal must collect the respondent's name, date of birth, protective order number, and date the respondent is eligible to have the respondent's firearms returned. Once the portal is available, law enforcement must utilize it prior to returning a firearm.

Prosecutors may submit written information for purposes of verifying compliance.

Residential Protections, Domestic Violence Proceedings. In a domestic violence action, the ability for a court to reveal the location of the victim to the attorney of the defendant is eliminated.

The Address Confidentiality Program. The Address Confidentiality Program is expanded to include all persons residing with the applicant.

Personal Financial Affairs Reporting for Government Officials. The type of individuals who are allowed to provide alternate descriptions of real property on their personal financial affairs forms are expanded to include participants in the Address Confidentiality Program.

Statewide Resource Prosecutor. Subject to appropriated funds, CJTC must administer a grant program to establish a statewide resource prosecutor for domestic violence cases. The grant recipient must be a statewide organization or association representing prosecuting attorneys. The grant recipient must hire a resource prosecutor to:

- provide technical assistance and research to prosecutors to prosecute domestic violence cases;
- provide training on implementation and enforcement of orders to surrender and prohibit weapons, extreme risk protection orders, first appearances, case resolution, duties regarding recovery of firearms at the scene of domestic violence incidents, service of orders to surrender weapons, service of extreme risk protection orders, and firearm rights restoration petitions for domestic violence perpetrators;
- provide additional training and resources to prosecutors to support a trauma-informed, victim-centered approach to prosecuting domestic violence cases;
- meet regularly with law enforcement agencies and prosecutors to explain legal issues and prosecutorial approaches to domestic violence cases and provide and receive feedback to improve case outcomes;
- consult with CJTC regarding the development and implementation of best practices for prosecuting domestic violence cases; and
- comply with other requirements established by CJTC.

CJTC may establish additional appropriate conditions for the grant and may adopt necessary policies and procedures to implement and administer the grant program, including monitoring the use of grant funds and compliance with grant requirements.

Domestic Violence High-Risk Teams. Subject to appropriated funds, the Department of Commerce must administer a pilot program to implement domestic violence high-risk

teams. A domestic violence program must be the lead or co-lead of the high-risk teams. The high-risk teams must include:

- early identification of the most dangerous cases through evidence-based lethality assessments;
- increased access to supportive services for high-risk victims;
- increased perpetrator monitoring and accountability; and
- a coordinated response to high-risk cases through a multidisciplinary team.

Law Enforcement Training. The domestic violence training that is part of the basic law enforcement curriculum is expanded to include domestic violence homicide prevention, the intersection of firearms and domestic violence, best practices for serving and enforcing protection orders, best practices for implementation and enforcement of orders to surrender and prohibit weapons and extreme risk protection orders, the impacts that trauma may have on domestic violence victims, and understanding the risks of traumatic brain injury posed by domestic violence. The investigation and interviewing skills that are part of the training must be trauma-informed.

The in-service training program is expanded to include training on domestic violence homicide prevention, the intersection of firearms and domestic violence, best practices for serving and enforcing protection orders, and assistance to, and services for, victims and children.

Subject to appropriated funds, CJTC must provide ongoing specialized, intensive, and integrative training for persons responsible for investigating domestic violence cases involving intimate partners. The training must be based on a victim-centered, trauma-informed approach to responding to domestic violence. Among other subjects, the training must include content on the neurobiology of trauma and trauma-informed interviewing, counseling, and investigative techniques.

The training must:

- be based on research-based practices and standards;
- offer participants an opportunity to practice interview skills and receive feedback from instructors;
- minimize the trauma of all persons who are interviewed during investigations;
- provide methods of reducing the number of investigative interviews necessary whenever possible;
- assure, to the extent possible, that investigative interviews are thorough, objective, and complete;
- recognize needs of special populations;
- recognize the nature and consequences of domestic violence victimization;
- require investigative interviews to be conducted in a manner most likely to permit the interviewed persons the maximum emotional comfort under the circumstances;
- address record retention and retrieval;
- address documentation of investigative interviews; and

- educate investigators on the best practices for notifying victims of significant events in the investigative process.

In developing the training, CJTC must seek advice from WASPC, organizations representing victims of domestic violence, and experts on domestic violence and the neurobiology of trauma. CJTC must consult with the Washington Association of Prosecuting Attorneys in an effort to design training containing consistent elements for all professionals engaged in interviewing and interacting with domestic violence victims in the criminal legal system.

CJTC must develop the training and begin offering it by January 1, 2025. Officers assigned to regularly investigate domestic violence must complete the training within one year of being assigned or by July 1, 2026, whichever is later.

Statewide Automated Notification Systems. AOC must work with WASPC to develop and maintain an interface to the Statewide Automated Victim Information and Notification System and the Statewide Automated Protected Person Notification System. The statewide automated protected person notification system must interface with the Washington State Patrol, AOC, and any court not contributing data to AOC in real time.

EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S):

- Requires a plan for expanding civil legal access to include training for the courts to differentiate between victims who may need civil legal assistance, and abusers who may allege to be victims to secure civil legal assistance.
- Sets factors for when a court may hold or waive a compliance review hearing and other related process.
- Changes the wait period for returning a firearm to five business days.
- Provides detail for what a person subject to an order to surrender must file with the court to prove full compliance.
- Authorizes a court to issue an order to surrender and prohibit weapons for additional types of no-contact orders.
- Clarifies immunity language—that the voluntary surrender of firearms or weapons pursuant to an order may not be used in a criminal proceeding, with exceptions.
- Makes additional technical changes.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed. However the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony on Engrossed Second Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: An abuser's suicidality is as predictive of intimate partner homicide as strangulation, assault, and threats to kill the victim. Domestic violence homicide is so predictable as to be preventable. Women fill courtrooms asking for orders of protection while in abject states of terror. The high risk teams provided in this bill are research and evidence based. It is the key to preventing domestic violence. DVHRTs are led by advocates. Teams are comprised of criminal justice agencies and community service providers. DVHRTs have been identified as a successful homicide reduction model by DOJ. Modest investment in training for prosecutors and law enforcement is needed.

OTHER: Section 201 should be struck and these funds should go directly to services that need it. Paying to learn what is already known does not support survivors needs for expanded civil legal representation. 100% of survivors need civil legal services. There is a net shortfall of 110 civil legal aid attorneys in Washington. Family law is the number one civil legal need in the state. The proposal to put non attorneys into this area could have devastating consequences for survivors. The surrender of firearms should be changed before you are released from custody. It is impossible to surrender firearms while in custody and people will be encouraged to lie and say they do not have firearms.

Persons Testifying: PRO: Representative Lauren Davis, Prime Sponsor; Taylor Gardner, WA Assn of Sheriffs and Police Chiefs; David Martin, KCPAO; Annalise Martucci, Office of Civil Legal Aid; Diane Rosenfeld, Harvard Law School, Gender Violence Program; Annie Murphey, Executive Director-Spokane Regional Domestic Violence Coalition; Monica Alexander, Washington State Criminal Justice Training Commission; Juliana Repp, Unemployment Law Project; Sandra Rodarte, Latino Civic Alliance; Kelly Dunne, Geiger Institute; Jazmin Peerson.

OTHER: Ramona Brandes, WACDL and WDA; Evangeline Stratton, Family Violence Appellate Project.

Persons Signed In To Testify But Not Testifying: OTHER: Rick Torrance, Department of Commerce.