

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5231

68th Legislature
2023 Regular Session

Passed by the Senate April 14, 2023
Yeas 32 Nays 13

President of the Senate

Passed by the House April 10, 2023
Yeas 63 Nays 33

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5231** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5231

AS AMENDED BY THE HOUSE

Passed Legislature - 2023 Regular Session

State of Washington

68th Legislature

2023 Regular Session

By Senate Law & Justice (originally sponsored by Senators Salomon, Dhingra, Hasegawa, Hunt, Nobles, Pedersen, Valdez, and C. Wilson)

READ FIRST TIME 01/27/23.

1 AN ACT Relating to the issuance of emergency domestic violence
2 no-contact orders; and amending RCW 10.99.040.

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

4 **Sec. 1.** RCW 10.99.040 and 2021 c 215 s 122 are each amended to
5 read as follows:

6 (1) Because of the serious nature of domestic violence, the court
7 in domestic violence actions:

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

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

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

18 (d) Shall identify by any reasonable means on docket sheets those
19 criminal actions arising from acts of domestic violence;

1 (e) Shall not deny issuance of a no-contact order based on the
2 existence of an applicable civil protection order preventing the
3 defendant from contacting the victim; and

4 (f) When issuing a no-contact order, shall attempt to determine
5 whether there are any other active no-contact orders, protection
6 orders, or restraining orders involving the defendant to assist the
7 court in ensuring that any no-contact order it may impose does not
8 lessen protections imposed by other courts under other such orders.

9 (2) (a) Because of the likelihood of repeated violence directed at
10 those who have been victims of domestic violence in the past, when
11 any person charged with or arrested for a crime involving domestic
12 violence is released from custody before arraignment or trial on bail
13 or personal recognizance, the court authorizing the release may
14 prohibit that person from having any contact with the victim and
15 others. The jurisdiction authorizing the release shall determine
16 whether that person should be prohibited from having any contact with
17 the victim. ~~((If there is no outstanding restraining or protective~~
18 ~~order prohibiting that person from having contact with the victim,~~
19 ~~the)) The court authorizing release may issue ~~((, by telephone,))~~ a
20 no-contact order ~~((prohibiting))~~ that:~~

21 (i) Prohibits the person charged or arrested from ((having))
22 making any attempt to contact ((with the victim or)), including
23 nonphysical contact, the victim or the victim's family or household
24 members, either directly, indirectly, or through a third party;

25 (ii) Excludes the defendant from a residence shared with the
26 victim, or from a workplace, school, or child care;

27 (iii) Prohibits the person from knowingly coming within, or
28 knowingly remaining within, a specified distance of a location or
29 vehicle; and

30 (iv) Includes other related prohibitions to reduce risk of harm.

31 ~~((In issuing the order, the court shall consider the~~
32 ~~provisions of)) The court shall verify that the requirements of RCW
33 10.99.030(3) have been satisfied, including that a sworn statement of
34 a peace officer has been submitted to the court, documenting that the
35 responding peace officers separated the parties and asked the victim
36 or victims at the scene about firearms, other dangerous weapons, and
37 ammunition that the defendant owns or has access to, and whether the
38 defendant has a concealed pistol license. If the sworn statement of a
39 peace officer or other information provided to the court indicates
40 there may be a risk of harm if the defendant has access to firearms,~~

1 dangerous weapons, or an active concealed pistol license, the court
2 shall verify that peace officers have temporarily removed and secured
3 all the firearms, dangerous weapons, and any concealed pistol
4 license. The court shall then determine whether an order to surrender
5 and prohibit weapons or an extreme risk protection order should be
6 issued pursuant to RCW 9.41.800 or chapter 7.105 RCW, ((and shall
7 order the defendant to surrender, and prohibit)) prohibiting the
8 ((person)) defendant from possessing, ((all)) purchasing, receiving,
9 having in the defendant's control or custody, accessing, or
10 attempting to purchase or receive, any firearms, dangerous weapons,
11 and any concealed pistol license and shall order the defendant to
12 surrender, and prohibit the defendant from possessing, any firearms,
13 dangerous weapons, and any concealed pistol license as required in
14 RCW 9.41.800, or shall issue an extreme risk protection order as
15 required by chapter 7.105 RCW. The court may make these
16 determinations on the record or off the record with a written
17 explanation when declining to impose the restrictions authorized in
18 this subsection.

19 ~~((c) The no-contact order shall also be issued in writing as~~
20 ~~soon as possible, and shall state that it may be extended as provided~~
21 ~~in subsection (3) of this section. By January 1, 2011, the~~
22 ~~administrative office of the courts shall develop a pattern form for~~
23 ~~all no-contact orders issued under this chapter. A no-contact order~~
24 ~~issued under this chapter must substantially comply with the pattern~~
25 ~~form developed by the administrative office of the courts.))~~

26 (3) (a) At the time of arraignment, the court shall review the
27 defendant's firearms purchase history provided by the prosecutor
28 pursuant to RCW 10.99.045, and any other firearms information
29 provided by law enforcement or court or jail staff, and shall
30 determine whether a no-contact order, an order to surrender and
31 prohibit weapons, or an extreme risk protection order shall be issued
32 or, if previously issued, extended.

33 (b) So long as the court finds probable cause, the court may
34 issue or extend a no-contact order, an order to surrender and
35 prohibit weapons, or an extreme risk protection order, even if the
36 defendant fails to appear at arraignment. The no-contact order shall
37 terminate if the defendant is acquitted or the charges are dismissed.
38 To the extent the court is aware, the court shall advise the
39 defendant of the ongoing requirements of any other no-contact,
40 restraining, or protection order that remains in effect.

1 (~~(b) In issuing the order, the court shall consider all~~
2 ~~information documented in the incident report concerning the person's~~
3 ~~possession of and access to firearms and whether law enforcement took~~
4 ~~temporary custody of firearms at the time of the arrest. The court~~
5 ~~may as a condition of release prohibit the defendant from possessing~~
6 ~~or accessing firearms and order the defendant to immediately~~
7 ~~surrender all firearms and any concealed pistol license to a law~~
8 ~~enforcement agency upon release.))~~

9 (c) If a no-contact order is issued or extended, the court may
10 also include in the conditions of release a requirement that the
11 defendant submit to electronic monitoring as defined in RCW
12 9.94A.030. If electronic monitoring is ordered, the court shall
13 specify who shall provide the monitoring services, and the terms
14 under which the monitoring shall be performed. Upon conviction, the
15 court may require as a condition of the sentence that the defendant
16 reimburse the providing agency for the costs of the electronic
17 monitoring.

18 (4) (a) Willful violation of a court order issued under
19 (~~(subsection (2), (3), or (7) of)~~) this section is punishable as
20 provided under RCW 7.105.450 or 7.105.460, or chapter 9.41 RCW.

21 (b) The written order releasing the person charged or arrested
22 shall contain the court's directives and shall bear the legend:
23 "Violation of this order is a criminal offense under chapter 7.105
24 RCW and will subject a violator to arrest; any assault, drive-by
25 shooting, or reckless endangerment that is a violation of this order
26 is a felony. You can be arrested even if any person protected by the
27 order invites or allows you to violate the order's prohibitions. You
28 have the sole responsibility to avoid or refrain from violating the
29 order's provisions. Only the court can change the order."

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

32 (5) (a) A peace officer may request, on an ex parte basis and
33 before criminal charges or a petition for a protection order or an
34 extreme risk protection order have been filed, an emergency no-
35 contact order, order to surrender and prohibit weapons, or extreme
36 risk protection order from a judicial officer on behalf of and with
37 the consent of the victim of an alleged act involving domestic
38 violence if the victim is able to provide such consent. If the victim
39 is incapacitated as a result of the alleged act of domestic violence,
40 a peace officer may request an emergency no-contact order, order to

1 surrender and prohibit weapons, or extreme risk protection order on
2 his or her behalf. The request shall be made based upon the sworn
3 statement of a peace officer and may be made in person, by telephone,
4 or by electronic means. If the court finds probable cause to believe
5 that the victim is in imminent danger of domestic violence based on
6 an allegation of the recent commission of an act involving domestic
7 violence, the court shall issue an emergency no-contact order and an
8 order to surrender and prohibit weapons or an extreme risk protection
9 order as required by RCW 9.41.800 or chapter 7.105 RCW. An emergency
10 no-contact order issued by a court will remain in effect until either
11 the court terminates the emergency no-contact order, the court finds
12 probable cause for a referred crime, or an ex parte hearing is held
13 on a petition for a protection order or extreme risk protection
14 order.

15 (b) If the court issues an order to surrender and prohibit
16 weapons or an extreme risk protection order, and has not verified
17 that peace officers have temporarily removed and secured all firearms
18 and dangerous weapons, and any concealed pistol license, all orders
19 issued by the court must be personally served by a peace officer and
20 the peace officer shall take possession of all firearms, dangerous
21 weapons, and any concealed pistol license belonging to the respondent
22 that are surrendered, in plain sight, or discovered pursuant to a
23 lawful search, as required by RCW 9.41.801.

24 (c) If the court does not issue an order to surrender and
25 prohibit weapons or an extreme risk protection order, or has verified
26 that all firearms, dangerous weapons, and any concealed pistol
27 license have been temporarily removed by law enforcement, service of
28 the court's orders may be effected electronically. Electronic service
29 must be effected by a law enforcement agency transmitting copies of
30 the petition and any supporting materials filed with the petition,
31 any notice of hearing, and any orders, or relevant materials for
32 motions, to the defendant at the defendant's electronic address or
33 the defendant's electronic account associated with email, text
34 messaging, social media applications, or other technologies.
35 Verification of notice is required and may be accomplished through
36 read-receipt mechanisms, a response, a sworn statement from the
37 person who effected service verifying transmission and any follow-up
38 communications such as email or telephone contact used to further
39 verify, or an appearance by the defendant at a hearing. Sworn proof

1 of service must be filed with the court by the person who effected
2 service.

3 (d) A no-contact order, order to surrender and prohibit weapons,
4 or extreme risk protection order authorized by telephonic or
5 electronic means shall also be issued in writing as soon as possible
6 and shall state that it may be extended as provided in subsection (3)
7 of this section.

8 (6) If a no-contact order has been issued prior to charging, that
9 order shall expire at arraignment or within seventy-two hours if
10 charges are not filed.

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

27 ~~((7) All courts shall develop policies and procedures by January~~
28 ~~1, 2011, to grant victims a process to modify or rescind a no-contact~~
29 ~~order issued under this chapter. The administrative office of the~~
30 ~~courts shall develop a model policy to assist the courts in~~
31 ~~implementing the requirements of this subsection.))~~

32 (8) For the purposes of this section, and unless context clearly
33 requires otherwise, "emergency no-contact order" means a no-contact
34 order issued by a court of competent jurisdiction before criminal
35 charges have been filed or before a petition for a protection order
36 or extreme risk protection order has been filed.

37 NEW SECTION. Sec. 2. If any provision of this act or its
38 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

--- **END** ---