
SENATE BILL 5076

State of Washington

68th Legislature

2023 Regular Session

By Senators L. Wilson and Padden

Prefiled 12/20/22.

1 AN ACT Relating to the authority to hold a person without bail
2 until their first appearance on a domestic violence or protection
3 order case; and amending RCW 10.31.100 and 7.105.450.

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

5 **Sec. 1.** RCW 10.31.100 and 2021 c 215 s 118 are each amended to
6 read as follows:

7 A police officer having probable cause to believe that a person
8 has committed or is committing a felony shall have the authority to
9 arrest the person without a warrant. A police officer may arrest a
10 person without a warrant for committing a misdemeanor or gross
11 misdemeanor only when the offense is committed in the presence of an
12 officer, except as provided in subsections (1) through (~~(11)~~) (12)
13 of this section.

14 (1) Any police officer having probable cause to believe that a
15 person has committed or is committing a misdemeanor or gross
16 misdemeanor, involving physical harm or threats of harm to any person
17 or property or the unlawful taking of property or involving the use
18 or possession of cannabis, or involving the acquisition, possession,
19 or consumption of alcohol by a person under the age of twenty-one
20 years under RCW 66.44.270, or involving criminal trespass under RCW

1 9A.52.070 or 9A.52.080, shall have the authority to arrest the
2 person.

3 (2) ((A)) Except as provided in subsection (3) of this section, a
4 police officer shall arrest and ((take into)) keep in custody,
5 ((pending release)) until release by a judicial officer on bail,
6 personal recognizance, or court order, a person without a warrant
7 when the officer has probable cause to believe that:

8 (a) A domestic violence protection order, a sexual assault
9 protection order, a stalking protection order, or a vulnerable adult
10 protection order has been issued, of which the person has knowledge,
11 under chapter 7.105 RCW, or an order has been issued, of which the
12 person has knowledge, under RCW 26.44.063, or chapter 9A.40, 9A.46,
13 9A.88, 10.99, 26.09, 26.10, 26.26A, 26.26B, or 74.34 RCW, or any of
14 the former chapters 7.90, 7.92, and 26.50 RCW, restraining the person
15 and the person has violated the terms of the order restraining the
16 person from acts or threats of violence, or restraining the person
17 from going onto the grounds of, or entering, a residence, workplace,
18 school, or day care, or prohibiting the person from knowingly coming
19 within, or knowingly remaining within, a specified distance of a
20 location, a protected party's person, or a protected party's vehicle,
21 or, in the case of an order issued under RCW 26.44.063, imposing any
22 other restrictions or conditions upon the person;

23 (b) An extreme risk protection order has been issued against the
24 person under chapter 7.105 RCW or former RCW 7.94.040, the person has
25 knowledge of the order, and the person has violated the terms of the
26 order prohibiting the person from having in his or her custody or
27 control, purchasing, possessing, accessing, or receiving a firearm or
28 concealed pistol license;

29 (c) A foreign protection order, as defined in RCW 26.52.010, or a
30 Canadian domestic violence protection order, as defined in RCW
31 26.55.010, has been issued of which the person under restraint has
32 knowledge and the person under restraint has violated a provision of
33 the foreign protection order or the Canadian domestic violence
34 protection order prohibiting the person under restraint from
35 contacting or communicating with another person, or excluding the
36 person under restraint from a residence, workplace, school, or day
37 care, or prohibiting the person from knowingly coming within, or
38 knowingly remaining within, a specified distance of a location, a
39 protected party's person, or a protected party's vehicle, or a
40 violation of any provision for which the foreign protection order or

1 the Canadian domestic violence protection order specifically
2 indicates that a violation will be a crime; or

3 (d) The person is eighteen years or older and within the
4 preceding four hours has assaulted a family or household member or
5 intimate partner as defined in RCW 10.99.020 and the officer
6 believes: (i) A felonious assault has occurred; (ii) an assault has
7 occurred which has resulted in bodily injury to the victim, whether
8 the injury is observable by the responding officer or not; or (iii)
9 that any physical action has occurred which was intended to cause
10 another person reasonably to fear imminent serious bodily injury or
11 death. Bodily injury means physical pain, illness, or an impairment
12 of physical condition. When the officer has probable cause to believe
13 that family or household members or intimate partners have assaulted
14 each other, the officer is not required to arrest both persons. The
15 officer shall arrest the person whom the officer believes to be the
16 primary physical aggressor. In making this determination, the officer
17 shall make every reasonable effort to consider: (A) The intent to
18 protect victims of domestic violence under RCW 10.99.010; (B) the
19 comparative extent of injuries inflicted or serious threats creating
20 fear of physical injury; and (C) the history of domestic violence of
21 each person involved, including whether the conduct was part of an
22 ongoing pattern of abuse.

23 (3) A police officer is not required to keep in custody a person
24 under subsection (2)(a) of this section if the person requires
25 immediate medical attention and is admitted to a hospital.

26 (4) Any police officer having probable cause to believe that a
27 person has committed or is committing a violation of any of the
28 following traffic laws shall have the authority to arrest the person:

29 (a) RCW 46.52.010, relating to duty on striking an unattended car
30 or other property;

31 (b) RCW 46.52.020, relating to duty in case of injury to, or
32 death of, a person or damage to an attended vehicle;

33 (c) RCW 46.61.500 or 46.61.530, relating to reckless driving or
34 racing of vehicles;

35 (d) RCW 46.61.502 or 46.61.504, relating to persons under the
36 influence of intoxicating liquor or drugs;

37 (e) RCW 46.61.503 or 46.25.110, relating to persons having
38 alcohol or THC in their system;

39 (f) RCW 46.20.342, relating to driving a motor vehicle while
40 operator's license is suspended or revoked;

1 (g) RCW 46.61.5249, relating to operating a motor vehicle in a
2 negligent manner.

3 (~~(4)~~) (5) A law enforcement officer investigating at the scene
4 of a motor vehicle accident may arrest the driver of a motor vehicle
5 involved in the accident if the officer has probable cause to believe
6 that the driver has committed, in connection with the accident, a
7 violation of any traffic law or regulation.

8 (~~(5)~~) (6)(a) A law enforcement officer investigating at the
9 scene of a motor vessel accident may arrest the operator of a motor
10 vessel involved in the accident if the officer has probable cause to
11 believe that the operator has committed, in connection with the
12 accident, a criminal violation of chapter 79A.60 RCW.

13 (b) A law enforcement officer investigating at the scene of a
14 motor vessel accident may issue a citation for an infraction to the
15 operator of a motor vessel involved in the accident if the officer
16 has probable cause to believe that the operator has committed, in
17 connection with the accident, a violation of any boating safety law
18 of chapter 79A.60 RCW.

19 (~~(6)~~) (7) Any police officer having probable cause to believe
20 that a person has committed or is committing a violation of RCW
21 79A.60.040 shall have the authority to arrest the person.

22 (~~(7)~~) (8) An officer may act upon the request of a law
23 enforcement officer, in whose presence a traffic infraction was
24 committed, to stop, detain, arrest, or issue a notice of traffic
25 infraction to the driver who is believed to have committed the
26 infraction. The request by the witnessing officer shall give an
27 officer the authority to take appropriate action under the laws of
28 the state of Washington.

29 (~~(8)~~) (9) Any police officer having probable cause to believe
30 that a person has committed or is committing any act of indecent
31 exposure, as defined in RCW 9A.88.010, may arrest the person.

32 (~~(9)~~) (10) A police officer may arrest and take into custody,
33 pending release on bail, personal recognizance, or court order, a
34 person without a warrant when the officer has probable cause to
35 believe that an antiharassment protection order has been issued of
36 which the person has knowledge under chapter 7.105 RCW or former
37 chapter 10.14 RCW and the person has violated the terms of that
38 order.

1 ~~((10))~~ (11) Any police officer having probable cause to believe
2 that a person has, within twenty-four hours of the alleged violation,
3 committed a violation of RCW 9A.50.020 may arrest such person.

4 ~~((11))~~ (12) A police officer having probable cause to believe
5 that a person illegally possesses or illegally has possessed a
6 firearm or other dangerous weapon on private or public elementary or
7 secondary school premises shall have the authority to arrest the
8 person.

9 For purposes of this subsection, the term "firearm" has the
10 meaning defined in RCW 9.41.010 and the term "dangerous weapon" has
11 the meaning defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

12 ~~((12))~~ (13) A law enforcement officer having probable cause to
13 believe that a person has committed a violation under RCW
14 77.15.160(5) may issue a citation for an infraction to the person in
15 connection with the violation.

16 ~~((13))~~ (14) A law enforcement officer having probable cause to
17 believe that a person has committed a criminal violation under RCW
18 77.15.809 or 77.15.811 may arrest the person in connection with the
19 violation.

20 ~~((14))~~ (15) Except as specifically provided in subsections (2),
21 ~~((3))~~ (4), ~~((4))~~ (5), and ~~((7))~~ (8) of this section, nothing in
22 this section extends or otherwise affects the powers of arrest
23 prescribed in Title 46 RCW.

24 ~~((15))~~ (16) No police officer may be held criminally or civilly
25 liable for making an arrest pursuant to subsection (2) or ~~((9))~~
26 (10) of this section if the police officer acts in good faith and
27 without malice.

28 ~~((16))~~ (17)(a) Except as provided in (b) of this subsection, a
29 police officer shall arrest and keep in custody, until release by a
30 judicial officer on bail, personal recognizance, or court order, a
31 person without a warrant when the officer has probable cause to
32 believe that the person has violated RCW 46.61.502 or 46.61.504 or an
33 equivalent local ordinance and the police officer: (i) Has knowledge
34 that the person has a prior offense as defined in RCW 46.61.5055
35 within ten years; or (ii) has knowledge, based on a review of the
36 information available to the officer at the time of arrest, that the
37 person is charged with or is awaiting arraignment for an offense that
38 would qualify as a prior offense as defined in RCW 46.61.5055 if it
39 were a conviction.

1 (b) A police officer is not required to keep in custody a person
2 under (a) of this subsection if the person requires immediate medical
3 attention and is admitted to a hospital.

4 **Sec. 2.** RCW 7.105.450 and 2022 c 268 s 21 are each amended to
5 read as follows:

6 (1)(a) Whenever a domestic violence protection order, a sexual
7 assault protection order, a stalking protection order, or a
8 vulnerable adult protection order is granted under this chapter, or
9 an order is granted under chapter 9A.40, 9A.44, 9A.46, 9A.88, 9.94A,
10 10.99, 26.09, 26.26A, or 26.26B RCW, or there is a valid foreign
11 protection order as defined in RCW 26.52.020, or there is a Canadian
12 domestic violence protection order as defined in RCW 26.55.010, and
13 the respondent or person to be restrained knows of the order, a
14 violation of any of the following provisions of the order is a gross
15 misdemeanor, except as provided in subsections (4) and (5) of this
16 section:

17 (i) The restraint provisions prohibiting acts or threats of
18 violence against, or stalking of, a protected party, or the restraint
19 provisions prohibiting contact with a protected party;

20 (ii) A provision excluding the person from a residence,
21 workplace, school, or day care;

22 (iii) A provision prohibiting the person from knowingly coming
23 within, or knowingly remaining within, a specified distance of a
24 location, a protected party's person, or a protected party's vehicle;

25 (iv) A provision prohibiting interfering with the protected
26 party's efforts to remove a pet owned, possessed, leased, kept, or
27 held by the petitioner, the respondent, or a minor child residing
28 with either the petitioner or the respondent; or

29 (v) A provision of a foreign protection order or a Canadian
30 domestic violence protection order specifically indicating that a
31 violation will be a crime.

32 (b) Upon conviction, and in addition to any other penalties
33 provided by law, the court:

34 (i) May require that the respondent submit to electronic
35 monitoring. The court shall specify who must provide the electronic
36 monitoring services and the terms under which the monitoring must be
37 performed. The order also may include a requirement that the
38 respondent pay the costs of the monitoring. The court shall consider

1 the ability of the convicted person to pay for electronic monitoring;
2 and

3 (ii) Shall impose a fine of \$15, in addition to any penalty or
4 fine imposed, for a violation of a domestic violence protection order
5 issued under this chapter. Revenue from the \$15 fine must be remitted
6 monthly to the state treasury for deposit in the domestic violence
7 prevention account.

8 (2) A law enforcement officer shall arrest without a warrant and
9 ~~((take into))~~ keep in custody until release by a judicial officer on
10 bail, personal recognizance, or court order, a person whom the law
11 enforcement officer has probable cause to believe has violated a
12 domestic violence protection order, a sexual assault protection
13 order, a stalking protection order, or a vulnerable adult protection
14 order, or an order issued under chapter 9A.40, 9A.44, 9A.46, 9A.88,
15 9.94A, 10.99, 26.09, 26.26A, or 26.26B RCW, or a valid foreign
16 protection order as defined in RCW 26.52.020, or a Canadian domestic
17 violence protection order as defined in RCW 26.55.010, that restrains
18 the person or excludes the person from a residence, workplace,
19 school, or day care, or prohibits the person from knowingly coming
20 within, or knowingly remaining within, a specified distance of a
21 location, a protected party's person, or a protected party's vehicle,
22 if the person restrained knows of the order. Presence of the order in
23 the law enforcement computer-based criminal intelligence information
24 system is not the only means of establishing knowledge of the order.
25 A law enforcement officer is not required to keep in custody a person
26 under this subsection if the person requires immediate medical
27 attention and is admitted to a hospital.

28 (3) A violation of a domestic violence protection order, a sexual
29 assault protection order, a stalking protection order, or a
30 vulnerable adult protection order, or an order issued under chapter
31 9A.40, 9A.44, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.26A, or 26.26B
32 RCW, or a valid foreign protection order as defined in RCW 26.52.020,
33 or a Canadian domestic violence protection order as defined in RCW
34 26.55.010, shall also constitute contempt of court, and is subject to
35 the penalties prescribed by law.

36 (4) Any assault that is a violation of a domestic violence
37 protection order, a sexual assault protection order, a stalking
38 protection order, or a vulnerable adult protection order, or an order
39 issued under chapter 9A.40, 9A.44, 9A.46, 9A.88, 9.94A, 10.99, 26.09,
40 26.26A, or 26.26B RCW, or a valid foreign protection order as defined

1 in RCW 26.52.020, or a Canadian domestic violence protection order as
2 defined in RCW 26.55.010, and that does not amount to assault in the
3 first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C
4 felony, and any conduct in violation of such an order that is
5 reckless and creates a substantial risk of death or serious physical
6 injury to another person is a class C felony.

7 (5) A violation of a domestic violence protection order, a sexual
8 assault protection order, a stalking protection order, or a
9 vulnerable adult protection order, or a court order issued under
10 chapter 9A.40, 9A.44, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.26A, or
11 26.26B RCW, or a valid foreign protection order as defined in RCW
12 26.52.020, or a Canadian domestic violence protection order as
13 defined in RCW 26.55.010, is a class C felony if the offender has at
14 least two previous convictions for violating the provisions of a
15 domestic violence protection order, a sexual assault protection
16 order, a stalking protection order, or a vulnerable adult protection
17 order, or an order issued under chapter 9A.40, 9A.44, 9A.46, 9A.88,
18 9.94A, 10.99, 26.09, 26.26A, or 26.26B RCW, or a valid foreign
19 protection order as defined in RCW 26.52.020, or a Canadian domestic
20 violence protection order as defined in RCW 26.55.010. The previous
21 convictions may involve the same victim or other victims specifically
22 protected by the orders the offender violated.

23 (6) (a) A defendant arrested for violating a domestic violence
24 protection order, sexual assault protection order, stalking
25 protection order, or vulnerable adult protection order, or an order
26 granted under chapter 9A.40, 9A.44, 9A.46, 9A.88, 9.94A, 10.99,
27 26.09, 26.26A, or 26.26B RCW, or a valid foreign protection order as
28 defined in RCW 26.52.020, or a Canadian domestic violence protection
29 order as defined in RCW 26.55.010, is required to appear in person
30 before a magistrate within one judicial day after the arrest. At the
31 time of the appearance, the court shall determine the necessity of
32 imposing a no-contact order or other conditions of pretrial release.

33 (b) A defendant who is charged by citation, complaint, or
34 information with violating any protection order identified in (a) of
35 this subsection and not arrested shall appear in court for
36 arraignment in person as soon as practicable, but in no event later
37 than 14 days after the next day on which court is in session
38 following the issuance of the citation or the filing of the complaint
39 or information.

1 (7) Upon the filing of an affidavit by the petitioner or any law
2 enforcement officer alleging that the respondent has violated a
3 domestic violence protection order, a sexual assault protection
4 order, a stalking protection order, or a vulnerable adult protection
5 order, or an order granted under chapter 9A.40, 9A.44, 9A.46, 9A.88,
6 9.94A, 10.99, 26.09, 26.26A, or 26.26B RCW, or a valid foreign
7 protection order as defined in RCW 26.52.020, or a Canadian domestic
8 violence protection order as defined in RCW 26.55.010, the court may
9 issue an order to the respondent, requiring the respondent to appear
10 and show cause within 14 days as to why the respondent should not be
11 found in contempt of court and punished accordingly. The hearing may
12 be held in the court of any county or municipality in which the
13 petitioner or respondent temporarily or permanently resides at the
14 time of the alleged violation.

15 (8) Appearances required under this section are mandatory and
16 cannot be waived.

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