HB 1715: Enacting comprehensive protections for victims of domestic violence and other violence involving family members or intimate partners

The Washington Defender Association and the Washington Association of Criminal Defense Lawyers are strongly opposed to this sweeping legislation which, among other concerning things, institutes the use of lethality assessments to be considered against accused persons in civil and criminal proceedings. A review of the available literature on lethality assessments shows that these may be meaningful tools for supporting some victims of intimate partner violence (notably English-proficient women in mixed-gender relationships) in obtaining services and safety planning.[1] This legislation, however, turns a shield into a sword to be used in a way that is not the intended and researched use of lethality assessments – to create a future dangerousness *high lethality designation* to be applied to accused respondents and defendants with numerous concerning legal implications. There is a significant concern that the impact of this legislation will fall most harshly on BIPOC respondents and defendants without actually increasing safety for victims of intimate partner violence.

Part I: Lethality Assessments

There are no validated studies on how a lethality assessment tool can be used to determine a high lethality designation for accused respondents and defendants. Lethality Assessment Tools were developed to provide abused women the ability to assess their own risk of intimate partner violence (IPV), and specifically domestic violence homicide, not for law enforcement, prosecutors, and courts to use in making legal decisions about the accused. They were meant to be used by women who are victims of IPV to obtain appropriate health care, social services, and other domestic violence (DV) safety planning interventions. These assessments used in a manner that has not been validated will severely impact the constitutional rights of respondents and defendants and cause other types of harm due to the risk of errors that wrongfully include individuals as highly lethal. Additionally, even for their intended use, there is little to no information about the demographics the assessments have been validated on including race, gender identity, sexual orientation, age, nationality, disability status, education, employment, income, nationality, English proficiency, or other factors.

This legislation would turn a tool for safety planning by victims of IPV into a "high lethality designation" for respondents and defendants in law enforcement, prosecutor, and court databases, despite this not being the intended use of such tools and no evidence that it can be used in that manner accurately. This is accompanied by the mandate to create model court forms for respondents and defendants who would have this high lethality designation along with rules regarding these high lethality designation court orders. It adds a requirement to RCW 10.21.050 that judicial officers in cases of alleged intimate partner violence must consider the results of any applicable and available lethality assessment without qualification, this could include an assessment done by a different alleged victim or that was several years old or otherwise shown to be erroneous.

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[1] https://www.mnadv.org/wp-content/uploads/2021/02/LAP-Effectiveness-Position-Paper.pdf; https://nij.ojp.gov/topics/articles/closer-look-lethality-assessment-program; https://vawnet.org/material/lethality-assessment-tools-critical-analysis; https://www.aannet.org/initiatives/edge-runners/profiles/edge-runners--profiles-danger-assessment; https://journals.sagepub.com/doi/10.1177/1524838018821952

Part II: Electronic Monitoring

The legislation creates a requirement for electronic monitoring with victim notification technology services for all courts in all jurisdictions to be created by July 1, 2024 but implements its use immediately in all sections that reference it. Latter sections make it clear that the costs are likely to be borne by respondents and defendants regardless of their ability to pay. It is unclear what the result will be especially for respondents in civil matters who are unable to pay for this requirement. For defendants in criminal cases, it will likely mean being confined while their cases are pending. It also fails to take into consideration respondents and defendants who are unhoused or housing unstable, their ability to work while on electronic monitoring, and other factors. It removes judicial discretion and independence in many circumstances, which raises a concern regarding the separation of powers. There already currently exist victim notification programs in Washington through the Victim Information and Notification (VINE) program that includes many of the notifications added in this legislation.

Part III: Access to Counsel

A new section is added to RCW 2.53 requires the office of civil legal aid to propose a plan to create a right to counsel for low-income survivors of domestic violence in protection order proceedings without a comparable right to counsel for low-income respondents. It also requires that minimum standards be developed for any attorney on the list of attorneys who specialize in this area and a requirement that the office verifies attorney qualifications. Low-income respondents, concerningly, will not be afforded counsel under this model. This impact will fall most harshly on BIPOC civil respondents.

Part IV: Civil Protection Orders

Adding language mandating respondents pay attorneys' fees without consideration for the ability to pay by respondent or petitioner including costs for motions to modify or terminate any other type of protection order.

Adding language requiring electronic monitoring with victim notification technology, before such technology reference in part II of the legislation may even be available. Mandating the court to impose the monitoring upon the request of the petitioner when there has been a high lethality designation under part I of this legislation. Adding electronic monitoring language to other types of orders issued under RCW 7.105 including sexual assault, stalking, and vulnerable adult protection orders. Again, there is a significant concern about the economic impact on low-income individuals and BIPOC respondents.

Part V: Domestic Violence Protections

Adds a definition to RCW 10.99.020 of "intimate terrorism" without an explanation of the basis for such terminology. There is no explanation as to how this term differs from other similar terms in other statutes such as "coercive control" and "mental abuse" defined in RCW 7.105 and why it should be used instead of existing terminology.

Adds a requirement that law enforcement connects victims (previously referred to as complaining witnesses) with the lethality hotline referenced in Part I and assists the victim with safety planning. It is concerning that the same groups that will be using the lethality assessments to categorize individuals as highly lethal are the same ones that are potentially facilitating the assessments and the impact that may have on the results of the assessments.

Removes the right of the attorney for a criminal defendant to be provided with the location of an alleged victim entirely without consideration for the fact that the legislation already precludes counsel from disclosing such information to their client. This implicates the right to counsel and an effective defense. It contradicts CrR 4.7(a)(1)(i) which requires that prosecutors

provide defendants the address of witnesses, absent a protective order, and CrR 4.7(h)(1) which prohibits investigation from being impeded.

Require the consideration of the results of *any available* lethality assessment in the issuance of a criminal no-contact order. There already exists court rules, CrR/CrRLJ 3.2 and RCW 10.99.040 which provide the court with detailed instructions on factors to consider when releasing persons accused of domestic violence.

Makes mandatory that if pretrial supervision is available that the court order an accused with a high lethality designation to the highest level of supervision, that electronic monitoring with victim notification technology as a condition of pretrial release and that pretrial release screening services must perform lethality assessments in cases of IPV. There will be a requirement for pretrial screeners to perform lethality assessments without any concern for whether the alleged victim is willing to participate or whether there is an individual who is properly trained to use and interpret such instruments. It bears repeating that lethality assessments were created as a voluntary interview tool for victims of abuse to obtain services, not as a tool to screen accused persons for future dangerousness.

Adds a requirement to RCW 10.99.100 for sentencing judges in courts of limited jurisdiction for domestic violence crimes whether the purpose of the crime was part of a pattern of intimate terrorism, a term without basis. Requiring the court to order electronic monitoring with victim notification technology for crimes with a high lethality designation, and for offenses that do not mandate firearms rights revocation where there is a high lethality designation ordering the surrender of all firearms and dangerous weapons immediately upon sentencing or release from confinement. RCW 10.99.100 already orders the court in (b) to consider whether "[t]he offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time." The requirement to surrender firearms when not otherwise required by firearm restriction laws implicates the defendant's second amendment rights.

Part VI. Firearms and Dangerous Weapons

The law allows the court to authorize an order for the search and seizure of *any* firearm or dangerous weapon at *any* location the court has probable cause to believe they are located. This is a major risk for violation of an accused's right to be free from unconstitutional searches and seizures. In certain circumstances, this may require accused persons serving a term of confinement to accompany law enforcement officers to locations where it is alleged firearms or dangerous weapons may be located. This creates a risk of implicating the Fifth Amendment right to remain silent, the Sixth Amendment right to counsel in addition to the Fourth Amendment right to be free from unlawful searches and seizures. There is also a new requirement for filing a proof of surrender or declaration of nonsurrender which also implicates the accused person's rights to remain silent and to counsel.

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