



Legislation Text

File #: CB 119589, Version: 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to the City's criminal code; conforming the Seattle Municipal Code to state law for crimes that require the submission of biological samples to the State of Washington; making technical corrections; adding a new Chapter 12A.09 to the Seattle Municipal Code; amending Sections 3.33.020, 12A.04.100, 12A.06.030, 12A.06.130, 12A.06.155, 12A.06.195, and 12A.10.070 of the Seattle Municipal Code; and repealing Sections 12A.06.010, 12A.06.035, 12A.06.040, 12A.06.180, 12A.10.040, 12A.10.130, and 12A.10.140 of the Seattle Municipal Code.

WHEREAS, in 2008, the Washington Legislature enacted HB 2713, amending RCW 43.43.754 and providing for the collection of DNA samples from defendants convicted of certain misdemeanors; and

WHEREAS, in 2008, the Seattle City Council passed Ordinance 122789, providing for the collection of DNA from Seattle Municipal Court defendants convicted of Seattle misdemeanors equivalent to those listed in RCW 43.43.754(1); and

WHEREAS, in 2014, the Washington State Patrol's Crime Lab stopped accepting DNA samples taken from Seattle Municipal Court defendants on the grounds that they were not convicted of the state law misdemeanors listed in RCW 43.43.754(1); and

WHEREAS, on March 18, 2019, the Washington Attorney General's Office sent Representative Tina Orwall an opinion letter stating that DNA samples taken from municipal court defendants could be submitted Washington State Patrol's Crime Lab if the defendants were convicted under municipal code provisions that incorporate by reference state law misdemeanors listed in RCW 43.43.754(1); and

WHEREAS, this ordinance satisfies the requirements of the Attorney General's Office's March 18, 2019 opinion letter by incorporating by reference the misdemeanors listed in RCW 43.43.754(1) that are

currently misdemeanor offenses under the Seattle Municipal Code;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Chapter 12A.09 is added to the Seattle Municipal Code as follows:

CHAPTER 12A.09 ADOPTION OF RCW OFFENSES

12A.09.010 Preliminary article

A. As used in this Chapter 12A.09, “RCW” means the Revised Code of Washington.

B. Whenever a state statute specifically adopted in this Chapter 12A.09 refers to another state statute not specifically adopted in this Chapter 12A.09, the statute referred to shall be given the force and effect necessary to enforce the statute specifically adopted in this Chapter 12A.09.

C. Whenever a state statute specifically adopted in this Chapter 12A.09 requires another state statute for the investigation, arrest, prosecution, sentencing, confinement, or enforcement of provisions in the statute specifically, the statute referred to shall be given the force and effect necessary to enforce the statute specifically adopted.

D. Whenever the RCW defines a word for a state statute specifically adopted in this Chapter 12A.09, that definition shall apply instead of any definition for the same word in this Title 12A.

E. Whenever the word “state” shall appear in any statute adopted by reference in this Chapter 12A.09, the word “city” shall substitute, except in those circumstances that set forth administrative licensing duties of the state and its subdivisions.

F. Whenever the term “prosecuting attorney” shall appear in any statute adopted by reference in this Chapter 12A.09, the term “City Attorney or an assistant City prosecutor” shall substitute, unless the context requires otherwise.

G. When issuing a citation, order, or complaint for the violation of any section of the RCW adopted by this Chapter 12A.09, it shall be sufficient for a commissioned officer or prosecutor to cite to and refer to the

RCW section number. After the effective date of the ordinance introduced as Council Bill 119589, any data, citation, order, or complaint that refers to Seattle Municipal Code sections repealed by Council Bill 119589 shall be interpreted as referring to the corresponding crime in Section 12A.09.020 unless the context otherwise requires.

H. The provisions of this Chapter 12A.09 do not apply to or govern the construction of or punishment of any offense committed prior to the effective date of the ordinance introduced as Council Bill 119589 or to the construction and application of any defense to a prosecution for such offense. Such an offense shall be construed and punished according to the provisions of the law existing at the time of the commission of the offense in the same manner as if this Chapter 12A.09 did not exist.

I. Violation of any provision of this Chapter 12A.09 shall be punishable under Section 12A.02.070.

12A.09.020 Adoption of RCW sections

The following RCW sections as amended are adopted by reference:

9.68A.090 - Communication with minor for immoral purposes - Penalties

9.94A.030's definition of "Domestic violence"

9.94A.835 - Special allegation - Sexual motivation - Procedures

9A.36.041 - Assault in the fourth degree

9A.46.020 - Definition - Penalties (Harassment)

9A.46.030 - Place where committed

9A.46.040 - Court-ordered requirements upon person charged with crime - Violation

9A.46.050 - Arraignment - No-contact order

9A.46.080 - Order restricting contact - Violation

9A.46.085 - Stalking no-contact orders - Appearance before magistrate required

9A.46.110 - Stalking

9A.88.010 - Indecent exposure

9A.88.110 - Patronizing a prostitute

9A.88.130 - Additional requirements

10.99.010 - Intent

10.99.020 - Definitions

10.99.030 - Law Enforcement Officers - Training, powers, duties - Domestic violence reports

10.99.040 - Duties of court

10.99.055 - Enforcement of orders

10.99.100 - Sentencing - Factors - Defendant's criminal history

10.99.901 - Construction

26.44.063 - Temporary restraining order or preliminary injunction - Enforcement - Notice of modification or termination of restraining order

26.44.067 - Temporary restraining order or preliminary injunction - Contents - Notice - Noncompliance - Defense - Penalty

26.50.010 - Definitions

26.50.110 - Violation of order - Penalties

43.43.754's crime of refusal to provide DNA

As used in this Title 12A, as well as in any citation, order, complaint, or charging documents, "sexual exploitation" means the crime of patronizing a prostitute as referred to in RCW 9A.88.110, and the crime of patronizing a prostitute as referred to in RCW 9A.88.110 and incorporated by reference in this Section 12A.09.020 may be known as "sexual exploitation" when charged in Seattle Municipal Court.

Section 2. Section 3.33.020 of the Seattle Municipal Code, last amended by Ordinance 124302, is amended as follows:

3.33.020 Jurisdiction - Authority((:))

The Municipal Court has jurisdiction to try violations of all City ordinances and all other actions brought to

enforce or recover license penalties or forfeitures declared or given by any such ordinances. It is empowered to forfeit cash bail or bail bonds and issue execution thereon, to hear and determine all causes, civil or criminal, arising under such ordinances, and to pronounce judgment in accordance therewith; provided, that for a violation of the criminal provisions of an ordinance no greater punishment shall be imposed than is authorized by state law. Judges of the Municipal Court shall not defer sentence for an offense sentenced under Section 11.56.025. As authorized by RCW 35.20.255, the period of probation shall not extend for more than five ~~((5))~~ years from the date of conviction for a defendant sentenced under Section 11.56.025 or for a domestic violence crime, which includes any non-felony crime listed in RCW 10.99.020, and the following crimes when committed by one ~~((1))~~ family or household member, as that term is defined in Section 12A.06.120, against another: Assault ~~((under Section 12A.06.010,))~~ , Stalking, and Violation of an Order under Section ~~((12A.06.035))~~ 12A.09.020, Reckless Endangerment under Section 12A.06.050, Coercion under Section 12A.06.090, Interfering with the Reporting of Domestic Violence under Section 12A.06.187, ~~((Violation of an Order under Section 12A.06.180,))~~ Property Destruction under Section 12A.08.020, Criminal Trespass First Degree under Section 12A.08.040, and Criminal Trespass Second Degree under Section 12A.08.040; and two ~~((2))~~ years in all other cases. All civil and criminal proceedings in Municipal Court, and judgments rendered therein, shall be subject to review in the Superior Court by writ of review or on appeal. Costs in civil and criminal cases may be taxed as provided by law.

Section 3. Section 12A.04.100 of the Seattle Municipal Code, last amended by Ordinance 111853, is amended as follows:

12A.04.100 Construction of ordinances with respect to culpability requirements~~((r))~~

~~((Where))~~ If an ordinance defining an offense does not clearly indicate a legislative intent to impose absolute liability, it should be construed as defining an offense requiring one of the mental states described in Section 12A.04.030. This section applies to all offenses defined by the ~~((ordinances))~~ laws of this City except those in Chapter 11.56 ~~((Seattle Municipal Code))~~ and Section 12A.09.020.

Section 4. Section 12A.06.010 of the Seattle Municipal Code, last amended by Ordinance 125345, is repealed:

~~((12A.06.010 Assault~~

~~A. A person is guilty of assault when he or she intentionally assaults another person.~~

~~B. The City Attorney may file a special allegation of sexual motivation when the person intentionally assaults another person and one of the purposes for the assault was for the actor's sexual gratification. Such a special allegation must be proved beyond a reasonable doubt, with either the court making a finding of fact as to this special allegation if it finds the defendant guilty of assault or, if a jury trial is had, the jury finding a special verdict as to this special allegation if it finds the defendant guilty of assault. Every person convicted of Assault where such special allegation has been found shall have a biological sample collected for purposes of DNA identification analysis, as provided in RCW 43.43.754, and shall pay a fee of \$100, as provided in RCW 43.43.7541.~~

~~C. Every person convicted of assault where domestic violence as defined in Section 12A.06.120 was pleaded and proven shall have a biological sample collected for purposes of DNA identification analysis, as provided in RCW 43.43.754, and shall pay a fee of \$100, as provided in RCW 43.43.7541.))~~

Section 5. Section 12A.06.030 of the Seattle Municipal Code, last amended by Ordinance 119010, is amended as follows:

12A.06.030 Menacing((=))

A. A person is guilty of menacing when by a present threat to another person subsequent to a history of threats or violence between himself or herself and such other person, he or she intentionally causes or attempts to cause such other person reasonably to fear serious bodily injury or death.

B. As used in this section, "threat" means to communicate, directly or indirectly, the intent to cause bodily injury in the future to another.

C. As used in this section, "history of threats or violence" means one ((=)) or more of the following:

1. Two ~~((2))~~ or more threats; or
2. One ~~((1))~~ or more assaults as ~~((defined))~~ incorporated in Section ~~((12A.06.010))~~ 12A.09.020.

Section 6. Section 12A.06.035 of the Seattle Municipal Code, last amended by Ordinance 124684, is repealed:

~~((12A.06.035 Stalking~~

~~A. A person is guilty of stalking when, without lawful authority:~~

- ~~1. He or she intentionally and repeatedly harasses or follows another person; and~~
- ~~2. The person being harassed or followed is placed in fear that the stalker intends to injure that person, another person, or property of the person or of another person; and~~
- ~~3. A reasonable person in the same situation and under the same circumstances as the person being harassed or followed would feel fear that the stalker intends to injure the person, another person, or property of that person or of another person; and~~
- ~~4. The stalker either:
 - ~~a. Intends to intimidate, harass or frighten the person, or~~
 - ~~b. Knows or reasonably should know that the person is intimidated, harassed or afraid.~~~~

~~B. It is not a defense to the crime of stalking:~~

- ~~1. Under subsection A4a of this section that the stalker was not given actual notice that the person did not want the stalker to contact or follow that person;~~
- ~~2. Under subsection A4b of this section that the stalker did not intend to intimidate, harass or frighten the person.~~

~~C. It is an affirmative defense to the crime of stalking that the defendant is a licensed private detective acting within the capacity of his or her license as provided by Chapter 18.165 RCW.~~

~~D. Attempts to contact or follow the person after being given actual notice that such person does not want to be contacted or followed constitutes prima facie evidence that the stalker intends to intimidate, harass~~

or frighten such person.

E. As used in this section:

1. "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. "Course of conduct" includes, in addition to any other form of communication, contact, or conduct, the sending of an electronic communication, but does not include constitutionally protected free speech. Constitutionally protected activity is not included within the meaning of "course of conduct."

2. "Follows" means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person's home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one (1) location to another.

3. "Harasses" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose. This course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the person, or, when the course of conduct would cause a reasonable parent to fear for the well-being of his or her child.

4. "Repeatedly" means on two (2) or more separate occasions.

F. A defendant arrested for Stalking shall be required to appear in person before a magistrate within one (1) judicial day after the arrest. At the time of required appearance, the court shall determine the necessity of imposing a stalking no-contact order under subsection G. Appearances required pursuant to this section are mandatory and cannot be waived.

G.

1. When any person charged with or arrested for Stalking or any other offense under Section

~~12A.06.040D is released from custody before arraignment or trial on bail or personal recognizance, the court may prohibit that person from having any contact with the victim and may issue a written stalking no-contact order prohibiting the person from having contact with the victim or from knowingly coming within, or knowingly remaining within, a specified distance of a location. If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim, and the victim does not qualify for a domestic violence protection order under RCW Chapter 26.50, the court authorizing release may issue the order by telephone and shall issue the order in writing as soon as possible.~~

~~2. At the time of arraignment or whenever a motion is brought to modify the conditions of the defendant's release, the court shall determine whether a no-contact order shall be issued or extended. If a no-contact order is issued or extended, the court may also include in the conditions of release a requirement that the defendant submit to electronic monitoring, including real-time global position satellite monitoring with victim notification. If electronic monitoring is ordered, the court shall specify who shall provide the monitoring services, and the terms under which the monitoring shall be performed. Upon conviction, the court may require as a condition of the sentence that the defendant reimburse the providing agency for the costs of the electronic monitoring, including costs relating to real-time global position satellite monitoring with victim notification. A no-contact order issued by the court in conjunction with criminal charges shall terminate if the defendant is acquitted or the charges are dismissed, unless the victim files an independent action for a stalking protection order. If the victim files an independent action for a civil stalking protection order, the order may be continued by the court until a full hearing is conducted pursuant to Laws of 2013, chapter 84, section 6.~~

~~3. If a defendant is found guilty of Stalking or any other offense under Section 12A.06.040D, a condition of the sentence restricts the defendant's ability to have contact with the victim and the victim does not qualify for a domestic violence protection order under RCW Chapter 26.50, the court shall issue a written no-contact order. A final no-contact order entered in conjunction with a criminal prosecution shall remain in effect for a period of five (5) years from the date of entry.~~

~~4. In issuing the no-contact order, the court shall consider the provisions of Section 12A.06.195. The written no-contact order shall contain the court's directives and shall bear the legend: "Violation of this order is a criminal offense under RCW Chapter 26.50 and Seattle Municipal Code section 12A.06.180 and will subject a violator to arrest. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order." A certified copy of the written no-contact order shall be provided to the victim at no charge. If a no-contact order has been issued prior to charging, that order shall expire at arraignment or within seventy-two (72) hours if charges are not filed.~~

~~5. Whenever an order is issued, modified or terminated pursuant to this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order.~~

~~6. A knowing violation of a no-contact order issued under this subsection 12A.06.035.G, RCW 7.92.160 or an equivalent ordinance is punishable under Section 12A.06.180.~~

~~H. Stalking is a gross misdemeanor. Every person convicted of Stalking shall have a biological sample collected for purposes of DNA identification analysis, as provided in RCW 43.43.754, and shall pay a fee of One Hundred Dollars (\$100.00), as provided in RCW 43.43.7541.)~~

Section 7. Section 12A.06.040 of the Seattle Municipal Code, last amended by Ordinance 124684, is repealed:

~~((12A.06.040 Harassment~~

~~A. A person is guilty of harassment if:~~

~~1. With the intent to annoy or alarm another person he/she repeatedly uses fighting words or obscene language, thereby creating a substantial risk of assault; or~~

~~2. Without lawful authority, the person knowingly threatens:~~

~~a. To cause bodily injury immediately or in the future to the person threatened or to any~~

~~other person, or~~

~~b. To cause physical damage to the property of a person other than the actor, or~~

~~e. To subject the person threatened or any other person to physical confinement or~~

~~restraint, or~~

~~d. Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety, and~~

~~e. The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out.~~

~~B. When any defendant charged with a crime of harassment is released from custody before trial on bail or personal recognizance, the court authorizing the release may issue a written order and require that the defendant:~~

~~1. Stay away from the home, school, business, or place of employment of the victim or victims of the alleged offense or other location, as shall be specifically named by the court in the order;~~

~~2. Refrain from contacting, intimidating, threatening, or otherwise interfering with the victim or victims of the alleged offense and such other persons, including but not limited to members of the family or household of the victim, as shall be specifically named by the court in the order.~~

~~If the court issues an order protecting the victim, it shall issue a written no-contact order pursuant to Subsection 12A.06.035G.~~

~~C. The court shall determine the necessity for imposing a no-contact order or other conditions of pre-trial release. The Seattle Police Department and Seattle Municipal Court may enforce this section as it relates to orders restricting the defendant's ability to have contact with the victims or others. The victim shall be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim is involved. If a defendant is found guilty of a crime of harassment and a condition of the sentence restricts the defendant's ability to have contact with the victim or witnesses, the condition shall be recorded and~~

~~a written certified copy of that order shall be provided to the victim or witnesses by the clerk of the court. Wilful violation of a court order issued under RCW Chapter 9A.46, this section, or an equivalent statute or ordinance, either as a condition of pre-trial release or as a condition of the sentence, is a gross misdemeanor. The written order shall contain the court's directives and shall bear the legend: "Violation of this order is criminal offense under RCW Chapter 9A.46 and SMC Section 12A.06.040 and will subject a violator to arrest."~~

~~D. For the purposes of subsections 12A.06.040.B and 12A.06.040.C, "a crime of harassment" includes any crime defined in Chapter 12A.06, property destruction as defined in Section 12A.08.020, criminal trespass as defined in Section 12A.08.040, indecent exposure as defined in Section 12A.10.130 and unlawful use of weapons to intimidate another as defined in Section 12A.14.075.~~

~~E. Every person convicted of Harassment shall have a biological sample collected for purposes of DNA identification analysis, as provided in RCW 43.43.754, and shall pay a fee of One Hundred Dollars (\$100.00), as provided in RCW 43.43.7541.)~~

Section 8. Section 12A.06.130 of the Seattle Municipal Code, last amended by Ordinance 120059, is amended as follows:

12A.06.130 No contact orders(;-)

* * *

B. Willful violation of a court order issued under this section, or of an order issued by any court of competent jurisdiction under an equivalent statute or ordinance, is punishable as RCW 26.50.110, Violation of an Order, under Section ~~((12A.06.180))~~ 12A.09.020. The written order releasing the person shall contain the court's directives and shall bear the legend: "Violation of this order is a criminal offense under Seattle Municipal Code Section ~~((12A.06.180))~~ 12A.09.020 and/or RCW Chapter 26.50 and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the

court can change the order." A certified copy of such order shall be provided to the victim. If a no-contact order has been issued prior to charging, that order shall expire at arraignment or within ~~((seventy-two (72)))~~ hours if charges are not filed. The no-contact order shall terminate if the defendant is acquitted or the charges are dismissed.

* * *

Section 9. Section 12A.06.155 of the Seattle Municipal Code, last amended by Ordinance 123395, is amended as follows:

12A.06.155 Domestic violence prevention~~((7))~~

* * *

C. The jurisdiction of Seattle Municipal Court shall be limited to enforcement of Section ~~((12A.06.180 A))~~ 12A.09.020, RCW 26.50.110(1), or the equivalent municipal ordinance, and the issuance and enforcement of temporary orders for protection provided for in Section 12A.06.170 and RCW 26.50.070 if:

1. A superior court has exercised or is exercising jurisdiction over a proceeding under RCW Title 26 or ~~((RCW Chapter))~~ chapter 13.34 RCW involving the parties; or
2. The petition for relief presents issues of residential schedule and of contact with children of the parties; or
3. The petition for relief requests the court to exclude a party from the dwelling which the parties share.

* * *

Section 10. Section 12A.06.180 of the Seattle Municipal Code, last amended by Ordinance 125345, is repealed:

~~((12A.06.180 Violation – Penalty – Contempt~~

~~A. Whenever an order is granted under this Chapter 12A.06 or chapters 7.90, 7.92, 9.94A, 9A.40, 9A.46, 9A.88, 10.99, 26.09, 26.10, 26.26, 26.50, or 74.34 RCW, any temporary order for protection is granted~~

~~under chapter 7.40 RCW pursuant to chapter 74.34 RCW or there is a valid foreign protection order as defined in RCW 26.52.020 and the respondent or person to be restrained knows of the order, a violation of any of the following provisions of the order is a gross misdemeanor:~~

~~1. The restraint provisions prohibiting acts or threats of violence against or stalking of a protected party, restraint provisions prohibiting contact with a protected party or restraint provisions prohibiting harassing, following, keeping under physical or electronic surveillance, cyberstalking or monitoring the actions, location, or communication of a protected party, a protected party's children, or members of a protected party's household;~~

~~2. A provision excluding the person from a residence, workplace, school, or day care;~~

~~3. A provision prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location;~~

~~4. A provision prohibiting interfering with the protected party's efforts to remove a pet owned, possessed, leased, kept, or held by the petitioner, respondent, or a minor child residing with either the petitioner or respondent; or~~

~~5. A provision of a foreign protection order specifically indicating that a violation will be a crime.~~

~~Upon conviction, and in addition to any other penalties provided by law, the court may require that the convicted person submit to electronic monitoring. The court shall specify who shall provide the electronic monitoring services and the terms under which the monitoring shall be performed. The court may require that the convicted person pay the costs of the monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring. The court shall impose a fine of \$15, in addition to any penalty or fine imposed, for violation of a domestic violence protection order issued under chapter 26.50 RCW. Revenue from this fine shall be collected by the clerk of the court and remitted monthly to the state treasury for deposit in the domestic violence prevention account.~~

~~B. A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order that restrains the person or excludes the person from a residence, workplace, school, or day care or prohibits the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, if the person restrained knows of the order. Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.~~

~~C. A violation of an order issued under this Chapter 12A.06 or chapters 7.90, 7.92, 9.94A, 9A.40, 9A.46, 9.88, 10.99, 26.09, 26.10, 26.26, 26.50, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020 shall also constitute contempt of court and is subject to the penalties prescribed by law.~~

~~D. Upon the filing of an affidavit by the petitioner or any peace officer alleging that the respondent has violated an order issued under this Chapter 12A.06 or chapters 7.90, 7.92, 9.94A, 9A.40, 9A.46, 9A.88, 10.99, 26.09, 26.10, 26.26, 26.50, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, the court may issue an order to the respondent, requiring the respondent to appear and show cause within 14 days why the respondent should not be found in contempt of court and punished accordingly.~~

~~E. When a party alleging a violation of an order for protection states that the party is unable to afford private counsel and asks the City Attorney for assistance, the City Attorney shall initiate and prosecute a contempt proceeding if there is probable cause to believe that the violation occurred. In this action, the court may require the violator of the order to pay the costs incurred in bringing the action, including a reasonable attorney's fee.~~

~~F. Any proceeding under this Chapter 12A.06 is in addition to other civil or criminal remedies.~~

~~G. Willful violation of a court order entered under RCW 26.44.063 is a misdemeanor. In addition, any person having actual notice of the existence of a restraining order issued by a court of competent jurisdiction under RCW 26.44.063 who refuses to comply with the provisions of such order is guilty of a misdemeanor. The notice requirement of the preceding sentence may be satisfied by a peace officer giving oral or written evidence~~

to the person subject to the order by reading from or handing to that person a copy certified by a notary public or the clerk of the court to be an accurate copy of the original court order which is on file. The copy may be supplied by the court or any party.

~~H. Every person convicted of violating a sexual assault protection order issued under chapter 7.90 RCW shall have a biological sample collected for purposes of DNA identification analysis, as provided in RCW 43.43.754, and shall pay a fee of \$100, as provided in RCW 43.43.7541.)~~

Section 11. Section 12A.06.195 of the Seattle Municipal Code, last amended by Ordinance 125345, is amended as follows:

12A.06.195 Court order requiring surrender of firearm, dangerous weapon, or concealed pistol license

* * *

B. When entering an order authorized under Section ((~~12A.06.035, 12A.06.040,~~) 12A.06.130, 12A.06.165, or 12A.06.170 or RCW 9A.46.040, 9A.46.050, 9A.46.080, or 9A.46.085 and upon a showing by either clear and convincing evidence or a preponderance of the evidence, but not by clear and convincing evidence, that a party has used, displayed, or threatened to use a firearm or other dangerous weapon in a felony, that a party has previously committed any offense making the party ineligible to possess a firearm under the provisions of RCW 9A.41.040 or that a party's possession of a firearm or other dangerous weapon presents a serious and imminent threat to public health or safety or to the health or safety of any person, the court shall:

1. Require the party to surrender any firearm or other dangerous weapon;
2. Require the party to surrender any concealed pistol license issued under RCW 9A.41.070;
3. Prohibit the party from obtaining or possessing a firearm or other dangerous weapon;
4. Prohibit the party from obtaining or possessing a concealed pistol license.

C. During any period of time a person is subject to a court order issued under Section ((~~12A.06.035, 12A.06.040,~~) 12A.06.130, 12A.06.165, or 12A.06.170 or RCW 9A.46.040, 9A.46.050, 9A.46.080, or 9A.46.085 after a hearing of which the person received actual notice and at which the person had an

opportunity to participate, that restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, that includes a finding that the person represents a credible threat to the physical safety of the intimate partner or child, and, that, by its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury, the court shall:

1. Require the party to surrender any firearm or other dangerous weapon;
2. Require the party to surrender any concealed pistol license issued under RCW 9.41.070;
3. Prohibit the party from obtaining or possessing a firearm or other dangerous weapon; and
4. Prohibit the party from obtaining or possessing a concealed pistol license.

* * *

Section 12. Section 12A.10.040 of the Seattle Municipal Code, last amended by Ordinance 125345, is repealed:

~~((12A.10.040 Sexual exploitation~~

~~A. A person is guilty of sexual exploitation if:~~

- ~~1. Pursuant to a prior understanding, he or she pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with him or her; or~~
- ~~2. He or she pays or agrees to pay a fee to another person pursuant to an understanding that in return therefor such person will engage in sexual conduct with him or her; or~~
- ~~3. He or she solicits or requests another person to engage in sexual conduct with him or her in return for a fee.~~

~~B. Sexual exploitation is a misdemeanor. Every person convicted of sexual exploitation shall have a biological sample collected for purposes of DNA identification analysis, as provided in RCW 43.43.754, and shall pay a fee of \$100, as provided in RCW 43.43.7541. When sentencing or imposing conditions on a person~~

~~convicted of or given a deferred sentence or a deferred prosecution for sexual exploitation, the court must require that the person:~~

~~1. not be subsequently arrested for sexual exploitation or a similar statute or local ordinance or commercial sexual abuse of a minor;~~

~~2. remain outside the geographical area, prescribed by the court, in which the person was arrested for this crime, unless this requirement would interfere with the person's legitimate employment or residence or otherwise be infeasible; and~~

~~3. fulfill the terms of a program, if a first-time offender, designated by the court, designed to educate offenders about the negative costs of prostitution.~~

These requirements are in addition to the penalties set forth in Section 12A.10.070.

~~C. As authorized by Section 12A.04.100, liability for sexual exploitation does not require proof of any of the mental states described in Section 12A.04.030.~~

~~D. The crime of sexual exploitation may be committed in more than one location. The crime is deemed to have been committed in any location in which the defendant commits any act under subsection 12A.10.040.A that constitutes part of the crime. A person who sends a communication as part of any act under subsection 12A.10.040.A is considered to have committed the crime both at the place from which the contact was made pursuant to subsection 12A.10.040.A and where the communication is received, provided that this Section 12A.10.040 must be construed to prohibit anyone from being prosecuted twice for substantially the same crime.))~~

Section 13. Section 12A.10.070 of the Seattle Municipal Code, last amended by Ordinance 124301, is amended as follows:

12A.10.070 Mandatory fee for defendant convicted of or entering into a diversion agreement or deferred prosecution for a prostitution-related offense or indecent exposure; forfeiture of funds used as part of

prostitution-related offenses(-)

A.

1. In addition to penalties set forth in Section 12A.10.020 and ~~((12A.10.130))~~ RCW 9A.88.010 under Section 12A.09.020, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating Section 12A.10.020 or 12A.10.130 shall be assessed a fee of ~~((Fifty Dollars (-)))~~ \$50~~((-.00))~~.

2. In addition to penalties set forth in ~~((Section 12A.10.040))~~ RCW 9A.88.110 under Section 12A.09.020, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating ~~((Section 12A.10.040))~~ RCW 9A.88.110 under Section 12A.09.020 shall be assessed a fee ~~((in the amount))~~ of ~~((One Thousand Five Hundred Dollars (-)))~~ \$1500~~((-.00))~~ if the person has no prior convictions, deferred sentences, deferred prosecutions or statutory or nonstatutory diversion agreements for this offense, ~~((Two Thousand Five Hundred Dollars (-)))~~ \$2500~~((-.00))~~ if the person has one ~~((1))~~ prior conviction, deferred sentence, deferred prosecution, or statutory or nonstatutory diversion agreement for this offense and ~~((Five Thousand Dollars (-)))~~ \$5000~~((-.00))~~ if the person has two ~~((2))~~ or more prior convictions, deferred sentences, deferred prosecutions, or statutory or nonstatutory diversion agreements for this offense.

3. In addition to penalties set forth in Section 12A.10.060, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating Section 12A.10.060 shall be assessed a fee in the amount of ~~((One Thousand Five Hundred Dollars (-)))~~ \$1500~~((-.00))~~ if the person has no prior convictions, deferred sentences, deferred prosecutions, or statutory or nonstatutory diversion agreements for this offense, ~~((Two Thousand Five Hundred Dollars (-)))~~ \$2500~~((-.00))~~ if the person has one (1) prior conviction, deferred sentence, deferred prosecution or statutory or nonstatutory diversion agreement for this offense and Five Thousand Dollars (\$5000.00) if the person has two ~~((2))~~ or more prior convictions, deferred sentences,

deferred prosecutions, or statutory or nonstatutory diversion agreements for this offense.

B. A person who is charged with a violation of Section ~~((12A.10.040 or))~~ 12A.10.060, or RCW 9A.88.110 under Section 12A.09.020, and who enters into a statutory or nonstatutory diversion agreement shall be assessed, as a part that agreement, a fee of ~~((One Thousand Dollars-))~~ \$1,000~~(())~~.

* * *

E. The fee assessed and collected under subsection 12A.10.070.A ~~((of this section))~~ shall be collected by the clerk of the court and remitted and subject to the use and distribution conditions of RCW 9A.88.120(4). Any fee assessed under subsection 12A.10.070.B ~~((of this section))~~ and the portion of any fine imposed upon a defendant convicted of a violation of Section 12A.10.010, 12A.10.020, ~~((12A.10.040))~~ or 12A.10.060, or RCW 9A.88.110 under Section 12A.09.020, that is retained by the City shall be collected by the clerk of the court or the Director of Probation Services and shall be deposited in the Sex Industry Victims Fund. Monies forfeited under subsection 12A.10.070.D ~~((of this section))~~ shall be deposited in the Vice Enforcement/Money Laundering Forfeiture Account.

* * *

Section 14. Section 12A.10.130 of the Seattle Municipal Code, enacted by Ordinance 124301, is repealed:

~~**((12A.10.130 Indecent Exposure.**~~

~~A. A person is guilty of indecent exposure if he or she intentionally makes any open and obscene exposure of his or her person or the person of another knowing that such conduct is likely to cause reasonable affront or alarm. The act of breastfeeding or expressing breast milk is not indecent exposure.~~

~~B. Indecent exposure is a gross misdemeanor if the person exposes himself or herself to a person under the age of fourteen (14) years. Otherwise, indecent exposure is a misdemeanor.)~~

Section 15. Section 12A.10.140 of the Seattle Municipal Code, last amended by Ordinance 124684, is repealed:

~~((12A.10.140 Communicating with a minor for immoral purposes~~

~~A. A person is guilty of communicating with a minor for immoral purposes if the person communicates with a minor or someone the person believes to be a minor for immoral purposes.~~

~~B. For purposes of this section, "minor" means any person under eighteen (18) years of age.~~

~~C. In a prosecution under this section, it is not a defense that the defendant did not know the alleged victim's age. It is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense, the defendant made a reasonable bona fide attempt to ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate, or other governmental or educational identification card or paper and did not rely solely on the oral allegations or apparent age of the minor.~~

~~D. Every person convicted of communicating with a minor for immoral purposes shall have a biological sample collected for purposes of DNA identification analysis, as provided in RCW 43.43.754, and shall pay a fee of \$100, as provided in RCW 43.43.7541.)~~

Section 16. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2019, and signed by me in open session in authentication of its passage this _____ day of _____, 2019.

President _____ of the City Council

Approved by me this _____ day of _____, 2019.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2019.

Monica Martinez Simmons, City Clerk

(Seal)