HB 1320: Civil Protection Orders

The Washington Association of Criminal Defense Lawyers (WACDL) and the Washington Defender Association (WDA) have concerns with portions of HB 1320, specifically:

- New Section 3(b) contends that sexual assaults are unreported because of stigma and trauma. That is an overbroad and potentially offensive generalization. Survivors of sexual violence do not report for many reasons that have nothing to do with their internal feelings, such as not trusting the criminal justice system generally.

- The Extreme Risk Protection Order (ERPO) petition can be brought by family, an intimate partner, or law enforcement. The inclusion of law enforcement in this list is problematic, and this is compounded by the extra access to justice avenues law enforcement has that the rest of the community does not (see Section 15(3)(b) which allows for "using an on-call, after-hours judge, as is done for approval of after-hours search warrants"). This paves the way for more law enforcement intrusion into a person's life though they may not be breaking any law. There are already laws that allow the government to detain persons who pose a serious danger to themselves or others through RCW 71.09, 71.05 and 10.77. This "extreme risk" addition to the government's authority is unnecessary.

- Section 24(2)(b) provides that courts *shall* prioritize ERPOs by law enforcement because having to wait for their hearing to be called because waiting "can hinder their other patrol and supervisory duties." Other members of the public likely receive less institutional support of their time in court (childcare, time off work, potential lost wages, anxiety and fear simply being present in court and talking about their lives to strangers) which law enforcement officers on the clock are not experiencing. Giving this preferential treatment to law enforcement over any other concerned person seeking an extreme risk protection order does not make sense in this circumstance.

- Section 24(5)(a) states that protection order proceedings are less burdensome to a respondent's 5th amendment rights than other civil proceedings; we do not agree. There are some limited 5th amendment protections written into Section 45(9)(a), but those protections are limited in scope and require respondent to invoke their 5th amendment privilege, despite the fact that no right to counsel exists for respondent in these civil proceedings and there appears to be no requirement that respondent be informed of their rights in these civil proceedings. (It is worth noting, by contrast, that Section 45 (8)(ii)(b) et seq allows municipal or county prosecutors to appear and argue against the respondent and on behalf of petitioner.)

- Section 58 makes violation of the Extreme Risk Protection Order provisions regarding firearms a felony, without providing any empirical basis to believe that classifying more

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conduct as criminal and thereby furthering a system of mass incarceration will make anyone safer. Without any real data suggesting that a new criminal statute will have real benefits outweighing the damage wrought by mass incarceration, there is little justification in requiring charges resulting in increased sentencing.

- Section 24(9)(a)(ii)(b) provides that in order to admit evidence regarding prior sexual activity of petitioner with respondent, respondent must file a written motion six judicial days before the hearing and provides procedures as to how that motion will be considered, heard, and decided. The same section, however, also acknowledges that such evidence can be relevant and/or its admission constitutionally required. The requirements of this section are so unduly burdensome as to amount to a prohibition on evidence of this kind, and possibly unlawful. Note that the petition for order itself only need by served on respondent 5 days before the hearing date under Section 21 – so a respondent who hasn't even been served notice of a hearing until 5 days before the hearing cannot file a written motion arguing for certain evidence to be admissible at that hearing 6 judicial days before the hearing.

- We share the same concerns that have been shared by TeamChild about the misuse of anti-harassment orders by schools again minors, especially youth of color, including :

    - Families expressly bear the cost of any required school transfer without exception for low-income families or individual circumstances where a transfer prevents access to education;
    - Ex parte orders exclude students from school for two weeks with no due process and no clear pathway to receive educational services;
    - Personal service of the petition on students is allowed at school without oversight or consideration of the necessity for that (and police contact with students at school is harmful in lasting ways);
    - Students stand to lose their right to education for a year (or longer), probably without counsel in these hearings, and with limited ability of the court to fully analyze the educational impact of their order;
    - This bill repeals intent language in Chapter 10.14 RCW that anti-harassment orders are not meant to address schoolyard scuffles when any changes should actually strengthen that language to clearly limit the use of anti-harassment orders to address school based behaviors that are being addressed by school personnel, even if the school response allows the students to remain in school together.
    - The definition of harassment is expanded to include a single incident of violence or threat of violence (terms which are undefined) and could cause harmful net-widening of use of anti harassment orders to address school behavior.
    - There are no age limits for respondents. Civil protection orders can be filed against elementary aged children. Specific remedies contemplate that they can be excluded from their elementary school.

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