

CHAPTER 265

[Senate Bill No. 6480]

OBSTRUCTING THE TAKING OF FISH OR WILDLIFE

AN ACT Relating to obstructing the taking of fish or wildlife; amending RCW 9A.46-.060; reenacting and amending RCW 77.21.010; adding new sections to chapter 77.16 RCW; providing an effective date; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 77.16 RCW to read as follows:

(1) A person commits the crime of obstructing the taking of fish or wildlife if the person:

(a) Harasses, drives, or disturbs fish or wildlife with the intent of disrupting lawful pursuit or taking thereof; or

(b) Harasses, interferes with, or intimidates an individual engaged in the lawful taking of fish or wildlife or lawful predator control.

(2) Violation of this section is a gross misdemeanor under RCW 77.21.010.

(3) It is a defense to any prosecution under subsection (1) of this section, if the person charged:

(a) Interferes with any person engaged in hunting outside legally established hunting seasons;

(b) Is preventing or attempting to prevent the injury or killing of a protected wildlife species, as defined by this title;

(c) Is preventing or attempting to prevent unauthorized trespass on private property; or

(d) Is defending oneself or another person from bodily harm or property damage by a person attempting to prevent hunting in a legally established hunting season.

NEW SECTION. Sec. 2. A new section is added to chapter 77.16 RCW to read as follows:

Any person who is damaged by any act prohibited in section 1 of this act may bring a civil action to enjoin further violations, and recover damages sustained, including a reasonable attorney's fee. The trial court may increase the award of damages to an amount not to exceed three times the damages sustained. A party seeking civil damages under this section may recover upon proof of a violation of the provisions of section 1 of this act by a preponderance of the evidence. The state of Washington may bring a civil action to enjoin violations of section 1 of this act.

Sec. 3. Section 77.16.240, chapter 36, Laws of 1955 as last amended by section 2, chapter 372, Laws of 1987, by section 19, chapter 380, Laws of 1987, and by section 69, chapter 506, Laws of 1987 and RCW 77.21.010 are each reenacted and amended to read as follows:

(1) A person violating RCW 77.16.040, 77.16.050, 77.16.060, 77.16.080, 77.16.210, 77.16.220, 77.16.310, 77.16.320, or 77.32.211, or committing a violation of RCW 77.16.020 or 77.16.120 involving 77.16.210, 77.16.220, 77.16.310, 77.16.320, section 1 of this 1988 act, or 77.32.211, or committing a violation of RCW 77.16.020 or 77.16.120 involving big game or an endangered species is guilty of a gross misdemeanor and shall be punished by a fine of not less than two hundred fifty dollars and not more than one thousand dollars or by imprisonment in the county jail for not less than thirty days and not more than one year or by both the fine and imprisonment. Each subsequent violation within a five-year period of RCW 77.16.040, 77.16.050, or 77.16.060, or of RCW 77.16.020 or 77.16.120 involving big game or an endangered species, as defined by the commission under the authority of RCW 77.04.090, shall be prosecuted and punished as a class C felony as defined in RCW 9A.20.020. In connection with each such felony prosecution, the director shall provide the court with an inventory of all articles or devices seized under this title in connection with the violation. Inventoried articles or devices shall be disposed of pursuant to RCW 77.21.040.

(2) A person violating or failing to comply with this title or rules adopted pursuant to this title for which no penalty is otherwise provided is guilty of a misdemeanor and shall be punished for each offense by a fine of five hundred dollars or by imprisonment for not more than ninety days in the county jail or by both the fine and imprisonment. The commission may provide, when not inconsistent with applicable statutes, that violation of a specific rule is an infraction under chapter 7.84 RCW.

(3) A person placing traps on private property without permission of the owner, lessee, or tenant where the land is improved and apparently used, or where the land is fenced or enclosed in a manner designed to exclude intruders or to indicate a property boundary line, or where notice is given by posting in a conspicuous manner, is guilty of the misdemeanor of trespass as defined and established in RCW 9A.52.010 and 9A.52.080 and shall be punished for each offense by a fine of not less than two hundred fifty dollars.

(4) Persons convicted of a violation shall pay the costs of prosecution and the penalty assessment in addition to the fine or imprisonment.

(5) The unlawful killing, taking, or possession of each wildlife member constitutes a separate offense.

(6) District courts have jurisdiction concurrent with the superior courts of misdemeanors and gross misdemeanors committed in violation of this title or rules adopted pursuant to this title and may impose the punishment provided for these offenses. Superior courts have jurisdiction over felonies committed in violation of this title.

****Sec. 4. Section 6, chapter 288, Laws of 1985 and RCW 9A.46.060 are each amended to read as follows:***

As used in this chapter, "harassment" may include but is not limited to any of the following crimes:

- (1) Harassment (RCW 9A.46.020);
- (2) Malicious harassment (RCW 9A.36.080);
- (3) Telephone harassment (RCW 9.61.230);
- (4) Assault in the first degree (~~((RCW 9A.36.010))~~) (RCW 9A.36.011);
- (5) Assault in the second degree (~~((RCW 9A.36.020))~~) (RCW 9A.36.021);
- (6) Simple assault (~~((RCW 9A.36.040))~~) (RCW 9A.36.041);
- (7) Reckless endangerment (RCW 9A.36.050);
- (8) Extortion in the first degree (RCW 9A.56.120);
- (9) Extortion in the second degree (RCW 9A.56.130);
- (10) Coercion (RCW 9A.36.070);
- (11) Burglary in the first degree (RCW 9A.52.020);
- (12) Burglary in the second degree (RCW 9A.52.030);
- (13) Criminal trespass in the first degree (RCW 9A.52.070);
- (14) Criminal trespass in the second degree (RCW 9A.52.080);
- (15) Malicious mischief in the first degree (RCW 9A.48.070);
- (16) Malicious mischief in the second degree (RCW 9A.48.080);
- (17) Malicious mischief in the third degree (RCW 9A.48.090);
- (18) Kidnapping in the first degree (RCW 9A.40.020);
- (19) Kidnapping in the second degree (RCW 9A.40.030);
- (20) Unlawful imprisonment (RCW 9A.40.040);
- (21) Rape in the first degree (RCW 9A.44.040);
- (22) Rape in the second degree (RCW 9A.44.050);
- (23) Rape in the third degree (RCW 9A.44.060);
- (24) Indecent liberties (RCW 9A.44.100);
- (25) Statutory rape in the first degree (RCW 9A.44.070);
- (26) Statutory rape in the second degree (RCW 9A.44.080); ~~((and))~~
- (27) Statutory rape in the third degree (RCW 9A.44.090); and
- (28) Obstructing the taking of fish or wildlife (section 1 of this 1988

act).

*Sec. 4 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 5. This act shall take effect July 1, 1988.

Passed the Senate March 8, 1988.

Passed the House March 2, 1988.

Approved by the Governor March 24, 1988, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State March 24, 1988.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 4, Senate Bill No. 6480 entitled:

"AN ACT Relating to obstructing the taking of fish or wildlife."

This measure creates the crime of obstructing the taking of wildlife and provides penalties. In addition, section 4 includes this new crime under the current provisions of chapter 9A.46 RCW.

Chapter 9A.46 RCW is aimed at making unlawful the invasion of a person's privacy through repeated acts and threats intended to harass that individual. The statute also allows for enjoining such activities. Because section 2 of Senate Bill No. 6480 also allows for enjoining violations, reference to chapter 9A.46 RCW is redundant and clouds the purposes of that act.

With the exception of section 4, Senate Bill No. 6480 is approved."

CHAPTER 266

[Substitute House Bill No. 752]

ASSAULT IN THE SECOND DEGREE—REVISED

AN ACT Relating to assault in the second degree; amending RCW 9A.36.021; adding a new section to chapter 9A.36 RCW; prescribing penalties; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

****NEW SECTION. Sec. 1. A new section is added to chapter 9A.36 RCW to read as follows:***

As used in this chapter, assault is:

(1) An attempt with unlawful force to inflict bodily injury, or a threatening act which a reasonable person would believe could lead to bodily injury, along with the apparent present ability to cause the injury, and where apprehension of injury is reasonably created; or

(2) The infliction of bodily injury by unlawful physical force or contact without the consent of the victim, including force or contact by any instrument or substance under the control of the person inflicting the bodily injury.

****Sec. 1 was vetoed, see message at end of chapter.***

Sec. 2. Section 5, chapter 257, Laws of 1986 as amended by section 2, chapter 324, Laws of 1987 and RCW 9A.36.021 are each amended to read as follows:

(1) A person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree:

(a) Intentionally assaults another and thereby recklessly inflicts substantial bodily harm; or

(b) Intentionally and unlawfully causes substantial bodily harm to an unborn quick child by intentionally and unlawfully inflicting any injury upon the mother of such child; or

(c) Assaults another with a deadly weapon; or

(d) With intent to inflict bodily harm, administers to or causes to be taken by another, poison or any other destructive or noxious substance; or

(e) With intent to commit a felony, assaults another; or

(f) Knowingly inflicts bodily harm which by design causes such pain or agony as to be the equivalent of that produced by torture.