

HOUSE BILL REPORT

HB 1560

*As Reported By House Committee on:
Judiciary*

Title: An act relating to court orders.

Brief Description: Changing provisions relating to orders for protection and antiharassment orders.

Sponsor(s): Representative Appelwick.

Brief History:

Reported by House Committee on:
Judiciary, February 6, 1991, DPS.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *That Substitute House Bill No. 1560 be substituted therefor, and the substitute bill do pass.*
Signed by 18 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Belcher; Broback; Forner; Inslee; Locke; R. Meyers; Mielke; H. Myers; Riley; Scott; D. Sommers; Tate; Vance; and Wineberry.

Minority Report: *Do not pass.* Signed by 1 member:
Representative Hargrove.

Staff: Pat Shelledy (786-7149).

Background: The Domestic Violence Prevention Act provides that a person who has been a victim of domestic violence may petition the court for an order of protection from the abuser. Upon receipt of the petition, the court must order a hearing which must be held not later than 14 days from the date of the order. Notice of the hearing must be personally served upon the person accused of being the abuser not less than five court days prior to the hearing. If timely service is not made, the court may set a new hearing date. Pending the hearing on the petition, the court may issue an ex parte order of protection without prior notice to the alleged abuser if the petitioner alleges that irreparable injury could result from domestic violence if a protection order is not issued immediately. The court must order that the ex parte order of protection is effective for a fixed period not to exceed 14 days, but the court may reissue the

order. A full hearing must be set not later than 14 days from the date of the temporary protection order. The alleged abuser must be personally served with a copy of the ex parte order along with a copy of the petition and notice of the hearing date. No provision exists for service by publication.

The Civil Antiharassment Act also creates an action known as a petition for an order for protection from unlawful harassment. The Civil Antiharassment Act provides protection for people who are being harassed by others that are not family or household members as required by the Domestic Violence Prevention Act. The Civil Antiharassment Act is modeled after the Domestic Violence Prevention Act. The antiharassment act also requires a hearing within 14 days from the date of the court order and requires personal service upon the accused not less than five court days before the hearing. The court may also order an ex parte order of protection and must set a hearing not later than 14 days from the date of the order. The Civil Antiharassment Act also does not provide for service by publication. A separate chapter allows for service by publication in various civil matters if the respondent deliberately avoids service of process. The chapter establishes regulations for service of process by publication.

Summary of Substitute Bill: The superior courts and district courts may, by local rule, adopt a time period for personal service of 21 days instead of 14 days for service of domestic violence and antiharassment petitions, notices of hearings, and ex parte orders of protection.

After an initial failed attempt to personally serve the respondent, at the time for the next hearing on the petition (or at subsequent hearings following failed attempts to serve the respondent), the court may reset the hearing on the petition and order that the respondent be served by publication under the following circumstances: (1) the server files an affidavit stating that the server was unable to serve the respondent and describes the number and types of attempts the server made to complete service; (2) the petitioner files an affidavit stating that the petitioner believes that the respondent is hiding from the server to avoid service, stating the reasons for that belief; (3) the server has mailed the respondent a copy of the summons, the notice of hearing, and the ex parte order at the respondent's last known address, if known; and (4) the court finds reasonable grounds exist to believe that the respondent is avoiding service and that further attempts to personally serve the respondent would be futile or unduly burdensome.

The service by publication must advise the respondent of the petition, notice of hearing, a summary of the provisions of the ex parte order, that a one-year order will be entered if the respondent fails to appear at the next hearing, and that a copy of all the documents are on file with the court clerk. A statutory format for the service by publication is provided. The publication must be made in a newspaper of general circulation in the county where the petition was brought once a week for two consecutive weeks.

If the respondent fails to appear at the hearing following service by publication, then the court may enter an order extending the restraining provisions of the ex parte order for one year.

Substitute Bill Compared to Original Bill: The 14-day service time period is restored striking the extension to 21 days. Added is the provision that the courts can adopt a local rule that allows adoption of a 21-day period of service. Service by publication is allowed if the court finds that the respondent is avoiding personal service. Several statutory requirements exist before allowing service by publication and then establishing proper service by publication. Following service by publication, the ex parte order can be extended to one year.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: Fourteen days is not sufficient time to serve if a person is avoiding service, especially since service must be made at least five days before the hearing. The system is frustrating and wastes a lot of time renoting the hearings. The requirement of returning every 14 days places burdens on victims when the respondent is deliberately avoiding service.

Testimony Against: The problem is lack of servers and a low priority for service, not the statute. The temporary orders should be turned into permanent orders as soon as possible. This bill would add delay.

Witnesses: Judge Robert McBeth, Renton District Court (supports original bill - current law is frustrating due to inability to serve within 14 days); Mike Ryherd, Human Services Roundtable and Washington State Coalition Against Domestic Violence (opposes original bill - service should be a high priority); Mary Pontarolo, Washington State Coalition Against Domestic Violence (opposes original bill - service should be a high priority); Cara Bertholf (original bill

should be expanded to allow permanent orders if unable to serve).