

HOUSE BILL REPORT

HB 2745

*As Reported By House Committee on:
Judiciary*

Title: An act relating to court orders for protection.

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

Sponsor(s): Representatives H. Myers, Belcher, Forner, Brough, Mitchell, Ogden, Appelwick, Morris, Riley, Ludwig, Paris, Wineberry, Winsley, Scott, Wood, Ferguson, Hochstatter, Sheldon, J. Kohl and Brekke.

Brief History:

Reported by House Committee on:
Judiciary, February 6, 1992, DPS.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *The substitute bill be substituted therefor and the substitute bill do pass.* Signed by 15 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Paris, Assistant Ranking Minority Member; Belcher; Broback; Forner; Hargrove; Inslee; R. Meyers; Mielke; H. Myers; Riley; Scott; Tate; and Vance.

Minority Report: *Do not pass.* Signed by 2 members: Representatives Padden, Ranking Minority Member; and D. Sommers.

Staff: Pat Shelledy (786-7149).

Background: The Domestic Violence Protection Act allows a person who alleges that he or she is a victim of domestic violence to petition the court for a protection order. The act contains detailed procedural requirements for issuing the orders.

Upon receipt of the petition, the court must order a hearing to be held within 14 days. The respondent must be personally served with notice of the hearing five days prior to the hearing. Pending the hearing, the court may issue a temporary ex parte order of protection. If the respondent is not served on time, the court may reset the hearing and renew the ex parte order of protection for another 14 days.

This process may be repeated a number of times if personal service cannot be made on the respondent.

After a hearing, the court may grant a protection order for a period not to exceed one year. The petitioner must initiate the process again if the petitioner wants continued protection after the one-year order expires.

The court may require the respondent to pay the filing fee, court costs, service fees, and other costs, including reasonable attorney fees.

Law enforcement must retain the order in their computer based information system for one year.

Very similar procedures exist under the Antiharassment Act. That act allows a petitioner who is being harassed by someone who is not a "family or household member" to seek a protection order. That act does not provide for award of costs and attorney fees.

Summary of Substitute Bill: The Domestic Violence Protection Act and the Antiharassment Act are amended to provide, under certain circumstances, for service of process by publication, entry of a permanent protection order or orders that last longer than one year, and award of costs and attorney fees in antiharassment cases.

Service of process by publication. If personal service has not been made on the respondent, the court must reset the hearing, must reissue the ex parte protection order for another 14 days, and must either order further attempts at personal service or allow service by publication.

The court may order service by publication if: 1) the server files an affidavit stating the server was unable to complete personal service. The affidavit must describe the number and types of attempts the server made to complete service; 2) the petitioner files an affidavit stating the petitioner believes the respondent is hiding to avoid service. The petitioner must explain the reasons for that belief; 3) the server has deposited a copy of the summons, notice of hearing, and ex parte order of protection in the post office directed to the respondent's last known address; and 4) the court finds reasonable grounds exist to believe the respondent is concealing himself or herself to avoid service and that further attempts to personally serve the respondent will be unduly burdensome or futile.

If the court permits service by publication, the court must reissue the ex parte order of protection. The publication must run once a week for three weeks in one of the three

most widely circulated newspapers in the county of the respondent's last known address and in the county where the hearing will be held. The publication must contain the details of the petition, the response requirements, and the consequences for failing to appear. Service is considered complete upon expiration of the three weeks. The court must reset the hearing for 24 days from the date of issuing the ex parte order and order permitting service by publication. The petitioner must pay for the costs of publication unless the county legislative authority authorizes funds for that purpose.

Permanent order of protection. The court may issue a permanent protection order or a protection order for longer than one year if the court finds the respondent is likely to resume acts of domestic violence against the petitioner or the petitioner's family or household members upon expiration of a one-year order. The court may not issue an order of protection for longer than one year if the order prohibits contact with the respondent's minor children. If an order involves the respondent's minor children, the court must advise the petitioner that upon expiration of the one-year order the petitioner may either re-petition for protection under the Domestic Violence Protection Act or may seek relief pursuant to the domestic relations provisions. The court may order service of the one-year order or the permanent order to be completed by personal service or service by publication if the court has already allowed service by publication.

The court must specify in the order whether the order was granted after personal service or service by publication and whether the final order was ordered served by publication or served personally. Law enforcement must put the information about how the process was served into the computer system so that they know whether service was by publication or personal service. The court must advise the petitioner that if the process is served by publication that the respondent will not be subject to criminal and contempt sanctions unless the respondent "knows of the order." When the police investigate a report of a violation of a no-contact order, the police must try to determine whether the respondent knew of the order. If the police think that the respondent did not know or probably did not know of the order, then the officer must make a reasonable attempt to obtain a copy of the order and serve it on the respondent during the investigation.

Reissuance of a one-year order. If the court issues a one-year order and the petitioner applies for a renewal of the order, the court must grant the petition unless the respondent proves by a preponderance of the evidence that

the respondent will not resume acts of domestic violence upon expiration of the order. The same rules regarding service of process apply to these provisions.

Antiharassment cases. Similar provisions are adopted in the antiharassment statute. The court may award costs and attorney fees to the petitioner in an antiharassment case.

Substitute Bill Compared to Original Bill: Current law is restored that a judge may, rather than must, issue an ex parte order of protection. Current law is restored that gives judges discretion to impose costs and attorney fees. A provision is added that the petitioner must pay for the cost of publication unless the county legislative authority funds service by publication. Additional procedural requirements for service by publication are added. The court must advise the petitioner that criminal liability will not result if the process is served by publication. The police must record whether service was made personally or by publication and, if called to a scene of an alleged violation of the order, must try to determine if the respondent knew of the order and, if not, must try to serve the respondent with a copy of the order. A provision is added that the court may enter an order that exceeds one year for a specified time period.

Fiscal Note: Requested on substitute bill February 8, 1992.

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

Testimony For: Victims of domestic violence and harassment should not have to bear the burden of repeatedly going to court every 14 days to renew protection orders when the person is avoiding service. Also, protection orders should last longer than one year. Victims should not have to face their abusers every year to renew the orders.

Testimony Against: Service by publication does not give the court jurisdiction over an offender and cannot result in imposing criminal liability on the respondent. Service by publication is also a bad idea, because it gives victims a false sense of security that they are protected when they are not. Judges should have discretion to deny protection orders because some people who ask for them are unbalanced and should not be able to subject an innocent person to arrest and criminal liability. The 14-day time period for service by publication is impractical.

Witnesses: Cara Berthoff, survivor of child abuse (pro); Judge Robert McBeth, Washington District and Municipal Court Judges Association (pro, with amendments); Deborah Senn and

Merril Cousin, Washington State Coalition Against Domestic Violence (supports in part, opposes in part); and Todd Bergstrom, King County Prosecutor's Office and Washington Association of Prosecuting Attorneys (opposes service by publication).