

FINAL BILL REPORT

SHB 2576

C 138 L 06

Synopsis as Enacted

Brief Description: Creating sexual assault protection orders.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Williams, Green, O'Brien, Kirby, Hunt, Ericks, Simpson, Lovick, McCoy, Lantz, Ormsby, Springer and Conway).

House Committee on Judiciary
Senate Committee on Judiciary

Background:

There are several types of orders a court may grant that restrict a person's ability to have contact with another person. Although there is potential overlap, the orders generally differ in who they apply to and in what context. For example, no-contact orders are available in criminal proceedings and may be imposed as a condition of release or sentence. Domestic violence protection orders are civil orders and apply to victims of domestic violence committed by family or household members, including persons in dating relationships. Anti-harassment orders are civil orders and may be obtained by a person who is the victim of on-going conduct that is considered seriously annoying, alarming, or harassing.

For domestic violence protection orders, the superior, district, and municipal court jurisdiction all have jurisdiction to issue an order. However, district and municipal courts is limited under certain circumstances, such as when the superior court has a pending family law action involving the parties.

Generally, it is a gross misdemeanor if the person to be restrained knows of the order and violates certain restraint provisions in the order. However, a violation may be a class C felony under certain circumstances, such as if the person violating the order has two prior convictions for violations.

Summary:

A new civil order is created called the sexual assault protection order (SAPO).

Filing a Petition

A person who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, including a single incident, may file a petition for a SAPO. A third party may file on behalf of a victim who is a minor child, a vulnerable adult, or any other adult who cannot file the petition due to age, disability, health, or inaccessibility. A person 16 years old or older may file a petition on his or her own behalf. The court need not appoint a guardian or guardian ad litem on behalf of a respondent who is 16 years old or older.

The petition must be accompanied by an affidavit stating specific statements or actions made at the time of the sexual assault or subsequently thereafter that give rise to a reasonable fear of future dangerous acts.

The petitioner must file the action in the county or municipality where the petitioner resides. Jurisdiction over these orders is the same as court jurisdiction over domestic violence protection orders. No filing fee may be charged.

Service of Process and Hearings

Upon receipt of the petition, the court must order a hearing no later than 14 days from the date of the order. Personal service must be made upon the respondent not less than five court days before the hearing. If timely personal service cannot be made, the court must set a new hearing date and require additional service attempts.

The court may order a hearing by telephone to accommodate a disability or, in exceptional circumstances, to protect a petitioner. The court may appoint counsel to represent the petitioner if the respondent is represented by counsel.

Procedures are established regarding the admissibility of evidence regarding the petitioner's prior sexual activity or reputation.

Ex Parte Temporary Orders and Final Orders

If the court finds by a preponderance of the evidence that the petitioner has been a victim of nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent, the court shall issue a SAPO.

To obtain an ex parte temporary SAPO, the petitioner must show that there is good cause to grant the remedy, regardless of prior service of process or notice upon the respondent because the harm which the order is intended to prevent would likely occur if the respondent were given any prior notice or greater notice than was actually given. An ex parte temporary SAPO order is effective for a fixed period not to exceed 14 days. A full hearing must be set within that 14 day period.

Generally, a final SAPO is effective for a fixed period of time not to exceed two years. However, the duration of an order may vary when entered in conjunction with a criminal proceeding. The order may be extended one or more times.

Relief Granted in the Order

The court may prohibit the respondent from having any contact, including nonphysical contact, with the petitioner directly, indirectly, or through third parties. The court must consider certain factors in cases where the petitioner and respondent are under the age of 18 and attend the same elementary, middle, or high school.

A petitioner shall not be denied a SAPO because the petitioner is a minor or because the petitioner did not report the assault to law enforcement. The court may not require proof of physical injury. In addition, the court may not deny relief based on evidence that the

respondent or the petitioner was voluntarily intoxicated or evidence that the petitioner engaged in limited consensual sexual touching.

Other Provisions

Violations of a SAPO are punishable under the penalty provision governing domestic violence protection orders. Various statutes that recognize domestic violence protection orders are amended to include sexual assault protection orders.

An ex parte temporary order is not admissible in a subsequent civil action for damages arising from the conduct alleged in the petition or order.

"Sexual conduct," "sexual penetration," and "nonconsensual" are defined. Other provisions are established, including provisions for keeping a petitioner's addresses confidential in court filings, modifying the terms of an order, establishing the role of sexual assault victim advocates, and requiring that, by September 1, 2006, the Administrative Office of the Court create standardized forms and informational brochures for sexual assault protection orders.

Votes on Final Passage:

House	97	0	
Senate	47	0	(Senate amended)

House Refuses to Concur			
Senate			(Senate receded)
Senate	45	0	(Senate amended)
House	98	0	(House concurred)

Effective: June 7, 2006