

SHB 2487 - S COMM AMD  
By Committee on Judiciary

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 74.34 RCW  
4 to read as follows:

5 (1) A copy of an order for protection granted under this chapter  
6 shall be forwarded by the clerk of the court on or before the next  
7 judicial day to the appropriate law enforcement agency specified in the  
8 order.

9 Upon receipt of the order, the law enforcement agency shall enter  
10 the order into the Washington crime information center system used by  
11 law enforcement agencies to list outstanding warrants. The order shall  
12 remain in the computer for the period stated in the order. The law  
13 enforcement agency shall only expunge from the Washington crime  
14 information center system orders that are expired, vacated, or  
15 superseded. Entry into the Washington crime information center system  
16 constitutes notice to all law enforcement agencies of the existence of  
17 the order. The order is fully enforceable in any county in the state.

18 (2) The information entered into the Washington crime information  
19 center system shall include notice to law enforcement whether the order  
20 was personally served, served by publication, or served by mail.

21 **Sec. 2.** RCW 74.34.120 and 2007 c 312 s 5 are each amended to read  
22 as follows:

23 (1) The court shall order a hearing on a petition under RCW  
24 74.34.110 not later than fourteen days from the date of filing the  
25 petition.

26 (2) Except as provided in section 4 or 5 of this act, personal  
27 service shall be made upon the respondent not less than ((six)) five  
28 court days before the hearing. ((When good faith attempts to

1 ~~personally serve the respondent have been unsuccessful, the court shall~~  
2 ~~permit service by mail or by publication.))~~

3 (3) When a petition under RCW 74.34.110 is filed by someone other  
4 than the vulnerable adult, notice of the petition and hearing must be  
5 personally served upon the vulnerable adult not less than ~~((six))~~ five  
6 court days before the hearing, except as provided in section 4 or 5 of  
7 this act. In addition to copies of all pleadings filed by the  
8 petitioner, the petitioner shall provide a written notice to the  
9 vulnerable adult using the standard notice form developed under RCW  
10 74.34.115. ~~((When good faith attempts to personally serve the~~  
11 ~~vulnerable adult have been unsuccessful, the court shall permit service~~  
12 ~~by mail, or by publication if the court determines that personal~~  
13 ~~service and service by mail cannot be obtained.))~~

14 (4) If timely personal service under subsections (2) and (3) of  
15 this section cannot be made, the court shall continue the hearing date  
16 ~~((until the substitute service approved by the court has been~~  
17 ~~satisfied))~~ and shall either require additional attempts at obtaining  
18 personal service or permit service by publication under section 4 of  
19 this act or service by mail under section 5 of this act.

20 (5)(a) A petitioner may move for temporary relief under chapter  
21 7.40 RCW. The court may continue any temporary order for protection  
22 granted under chapter 7.40 RCW until the hearing on a petition under  
23 RCW 74.34.110 is held.

24 (b) Written notice of the request for temporary relief must be  
25 provided to the respondent, and to the vulnerable adult if someone  
26 other than the vulnerable adult filed the petition. A temporary  
27 protection order may be granted without written notice to the  
28 respondent and vulnerable adult if it clearly appears from specific  
29 facts shown by affidavit or declaration that immediate and irreparable  
30 injury, loss, or damage would result to the vulnerable adult before the  
31 respondent and vulnerable adult can be served and heard, or that show  
32 the respondent and vulnerable adult cannot be served with notice, the  
33 efforts made to serve them, and the reasons why prior notice should not  
34 be required.

35 **Sec. 3.** RCW 74.34.135 and 2007 c 312 s 9 are each amended to read  
36 as follows:

37 (1) When a petition for protection under RCW 74.34.110 is filed by

1 someone other than the vulnerable adult or the vulnerable adult's full  
2 guardian over either the person or the estate, or both, and the  
3 vulnerable adult for whom protection is sought advises the court at the  
4 hearing that he or she does not want all or part of the protection  
5 sought in the petition, then the court may dismiss the petition or the  
6 provisions that the vulnerable adult objects to and any protection  
7 order issued under RCW 74.34.120 or 74.34.130, or the court may take  
8 additional testimony or evidence, or order additional evidentiary  
9 hearings to determine whether the vulnerable adult is unable, due to  
10 incapacity, undue influence, or duress, to protect his or her person or  
11 estate in connection with the issues raised in the petition or order.  
12 If an additional evidentiary hearing is ordered and the court  
13 determines that there is reason to believe that there is a genuine  
14 issue about whether the vulnerable adult is unable to protect his or  
15 her person or estate in connection with the issues raised in the  
16 petition or order, the court may issue a temporary order for protection  
17 of the vulnerable adult pending a decision after the evidentiary  
18 hearing.

19 (2) An evidentiary hearing on the issue of whether the vulnerable  
20 adult is unable, due to incapacity, undue influence, or duress, to  
21 protect his or her person or estate in connection with the issues  
22 raised in the petition or order, shall be held within fourteen days of  
23 entry of the temporary order for protection under subsection (1) of  
24 this section. If the court did not enter a temporary order for  
25 protection, the evidentiary hearing shall be held within fourteen days  
26 of the prior hearing on the petition. Except as provided in sections  
27 4 and 5 of this act, notice of the time and place of the evidentiary  
28 hearing shall be personally served upon the vulnerable adult and the  
29 respondent not less than ((six)) five court days before the hearing.  
30 ~~((When good faith attempts to personally serve the vulnerable adult and~~  
31 ~~the respondent have been unsuccessful, the court shall permit service~~  
32 ~~by mail, or by publication if the court determines that personal~~  
33 ~~service and service by mail cannot be obtained.)) If timely service  
34 cannot be made, the court ((may)) shall set a new hearing date and  
35 shall either require additional attempts at obtaining personal service  
36 or permit service by publication under section 4 of this act or service  
37 by mail under section 5 of this act. The court shall not require more  
38 than two attempts at obtaining personal service and shall permit~~

1 service by publication or by mail unless the petitioner requests  
2 additional time to attempt personal service. A hearing under this  
3 subsection is not necessary if the vulnerable adult has been determined  
4 to be fully incapacitated over either the person or the estate, or  
5 both, under the guardianship laws, chapter 11.88 RCW. If a hearing is  
6 scheduled under this subsection, the protection order shall remain in  
7 effect pending the court's decision at the subsequent hearing.

8 (3) At the hearing scheduled by the court, the court shall give the  
9 vulnerable adult, the respondent, the petitioner, and in the court's  
10 discretion other interested persons, the opportunity to testify and  
11 submit relevant evidence.

12 (4) If the court determines that the vulnerable adult is capable of  
13 protecting his or her person or estate in connection with the issues  
14 raised in the petition, and the individual continues to object to the  
15 protection order, the court shall dismiss the order or may modify the  
16 order if agreed to by the vulnerable adult. If the court determines  
17 that the vulnerable adult is not capable of protecting his or her  
18 person or estate in connection with the issues raised in the petition  
19 or order, and that the individual continues to need protection, the  
20 court shall order relief consistent with RCW 74.34.130 as it deems  
21 necessary for the protection of the vulnerable adult. In the entry of  
22 any order that is inconsistent with the expressed wishes of the  
23 vulnerable adult, the court's order shall be governed by the  
24 legislative findings contained in RCW 74.34.005.

25 NEW SECTION. Sec. 4. A new section is added to chapter 74.34 RCW  
26 to read as follows:

27 (1) If the respondent, or the vulnerable adult where the petition  
28 is filed by someone other than the vulnerable adult, was not personally  
29 served with the petition, notice of hearing, and ex parte order before  
30 the hearing, the court shall reset the hearing for twenty-four days  
31 from the date of entry of the order and may order service by  
32 publication instead of personal service under the following  
33 circumstances:

34 (a) The sheriff, municipal officer, or other process server files  
35 an affidavit stating that the officer or process server was unable to  
36 complete personal service upon the party to be served. The affidavit

1 must describe the number and types of attempts the officer made to  
2 complete service;

3 (b) The petitioner files an affidavit stating that the petitioner  
4 believes that the party to be served is hiding from the server to avoid  
5 service or is being hidden from the server to avoid service. The  
6 petitioner's affidavit must state the reasons for the belief that the  
7 party to be served is avoiding service or being hidden to avoid  
8 service;

9 (c) The server has deposited a copy of the summons, in  
10 substantially the form prescribed in subsection (3) of this section,  
11 notice of hearing, and the ex parte order of protection in the post  
12 office, directed to the party to be served at the party's last known  
13 address, unless the server states that the server does not know the  
14 address of the party to be served; and

15 (d) The court finds reasonable grounds exist to believe that the  
16 party to be served is concealing himself or herself to avoid service or  
17 is being hidden from the server to avoid service, and that further  
18 attempts to personally serve the party to be served would be futile or  
19 unduly burdensome.

20 (2) The court shall reissue the temporary order of protection not  
21 to exceed another twenty-four days from the date of reissuing the ex  
22 parte protection order and order to provide service by publication.

23 (3) The publication shall be made in a newspaper of general  
24 circulation in the county where the petition was brought and in the  
25 county of the last known address of the party to be served once a week  
26 for three consecutive weeks. The newspaper selected must be one of the  
27 three most widely circulated papers in the county. The publication of  
28 summons shall not be made until the court orders service by publication  
29 under this section. Service of the summons shall be considered  
30 complete when the publication has been made for three consecutive  
31 weeks. The summons must be signed by the petitioner. The summons  
32 shall contain the date of the first publication, and shall require the  
33 respondent upon whom service by publication is desired to appear and  
34 answer the petition on the date set for the hearing. The summons shall  
35 also contain a brief statement of the reason for the petition and a  
36 summary of the provisions under the ex parte order. The summons shall  
37 be essentially in the following form:

1 In the ..... court of the state of Washington for  
2 the county of .....

3 ....., Petitioner

4 vs. No. ....

5 ....., Respondent

6 The state of Washington to ..... (respondent):

7 You are hereby summoned to appear on the ... day  
8 of ....., 20 .., at ... a.m./p.m., and respond to the  
9 petition. If you fail to respond, an order of protection will  
10 be issued against you pursuant to the provisions of the  
11 vulnerable adult protection act, chapter 74.34 RCW, for a  
12 period of up to five years from the date you are required to  
13 appear. A temporary order of protection has been issued  
14 against you, restraining you from the following: (Insert a  
15 brief statement of the provisions of the ex parte order). A  
16 copy of the petition, notice of hearing, and ex parte order  
17 has been filed with the clerk of this court.

18 .....  
19 Petitioner .....

20 NEW SECTION. **Sec. 5.** A new section is added to chapter 74.34 RCW  
21 to read as follows:

22 (1) In circumstances justifying service by publication under  
23 section 4 of this act, if the serving party files an affidavit stating  
24 facts from which the court determines that service by mail is just as  
25 likely to give actual notice as service by publication and that the  
26 serving party is unable to afford the cost of service by publication,  
27 the court may order that service be made by mail. The service shall be  
28 made by any person over eighteen years of age, who is competent to be  
29 a witness, other than a party, by mailing copies of the order and other  
30 process to the party to be served at his or her last known address or  
31 any other address determined by the court to be appropriate. Two  
32 copies shall be mailed, postage prepaid, one by ordinary first-class  
33 mail and the other by a form of mail requiring a signed receipt showing  
34 when and to whom it was delivered. The envelopes must bear the return  
35 address of the sender.

1 (2) Proof of service under this section shall be consistent with  
2 court rules for civil proceedings.

3 (3) Service under this section may be used in the same manner and  
4 shall have the same jurisdictional effect as service by publication for  
5 purposes of this chapter. Service shall be deemed complete upon the  
6 mailing of two copies as prescribed in this section.

7 NEW SECTION. **Sec. 6.** A new section is added to chapter 74.34 RCW  
8 to read as follows:

9 Following completion of service by publication as provided in  
10 section 4 of this act or by mail as provided in section 5 of this act,  
11 if the party served by publication or by mail fails to appear at the  
12 hearing, the court may issue an order of protection as provided in RCW  
13 74.34.130."

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14 On page 1, line 1 of the title, after "orders;" strike the  
15 remainder of the title and insert "amending RCW 74.34.120 and  
16 74.34.135; and adding new sections to chapter 74.34 RCW."

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