
Judiciary Committee

HB 2563

Title: An act relating to service of process in domestic violence cases.

Brief Description: Regarding service of process in domestic violence cases.

Sponsors: Representatives Upthegrove and Lantz.

Brief Summary of Bill

- Requires a court to allow service of process by publication or mail for certain domestic violence protection orders after a mandatory second attempt to serve respondent personally has failed.
- Requires personal service on the nonmoving party at least five court days before a hearing to modify the terms of certain domestic violence protection orders.
- Requires a court to allow notice of a modification hearing to be served on the nonmoving party by publication or mail after a mandatory second attempt to obtain personal service has failed.

Hearing Date: 1/16/08

Staff: Lara Zarowsky (786-7123).

Background:

An order of protection is available to a petitioner who alleges the existence of domestic violence by a respondent. The petitioner must provide an affidavit, submitted under oath, stating the particular facts and circumstances giving rise to the request for an order of protection. A filing fee may not be imposed for the submission of a petition, and the necessary number of certified copies of the order are provided to a petitioner free of charge. A petition may be made notwithstanding any other action pending between the parties, except in cases where the court "realigns" the petitioner and respondent after finding that the original petitioner is the abuser and the original respondent is the victim.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Upon receipt of a petition for protection, the court must schedule a hearing within 14 days. The court may schedule a hearing by telephone in certain circumstances, provided that assurances of the petitioner's identity are secured before the hearing is conducted.

Service

The respondent named in the petition must be personally served no less than five court days prior to the hearing.

If timely personal service cannot be made, the court must set a new hearing date and either 1) require "additional attempts" to serve the respondent personally, or 2) allow service on the respondent to be made either by publication or through first class mail.

If the court permits service by publication or mail, the next hearing date must be set no later than 24 days from the date of the order. The court may issue a temporary ex parte order of protection for the period of time pending a hearing.

Modification

The court may modify the terms of an existing order of protection pursuant to an application to modify. The application must provide notice to all parties, and a hearing must be held before the terms may be modified.

If an order is terminated or modified before the date it was set to expire, the court clerk must send a true copy of the modified or terminated order to the law enforcement agency specified on the modified or terminated order.

Summary of Bill:

The court must allow service by publication or mail after a mandatory second attempt to serve the respondent by personal service has failed, unless the petitioner requests additional time to attempt personal service.

Personal service upon the nonmoving party must be accomplished no less than five court days before a hearing to modify an existing protection order.

If personal service cannot be accomplished, the court must allow notice of the modification hearing to be served on the nonmoving party by publication or mail after a mandatory second attempt to obtain personal service has failed, unless the moving party requests additional time to attempt personal service.

If service by publication or mail is permitted, the court must set the modification hearing date no later than 24 days from the date of the order permitting service by publication or mail.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.