
Judiciary Committee

HB 1565

Title: An act relating to the termination or modification of domestic violence protection orders.

Brief Description: Concerning the modification and termination of domestic violence protection orders.

Sponsors: Representatives Frockt, Rodne, Pedersen, Eddy, Goodman, Roberts, Walsh, Green, Jacks, Fitzgibbon, Reykdal, Kenney, Stanford, Billig and Kelley.

Brief Summary of Bill

- Requires respondents to permanent domestic violence protection orders and orders issued for a period of greater than two years to submit an affidavit setting forth relevant facts when filing a motion to modify or terminate an order, and requires the court to review the affidavits prior to granting a hearing on a motion.
- Prohibits the modification or termination of permanent domestic violence protection orders and orders issued for a period of greater than two years by a motion of a respondent unless the respondent proves by clear and convincing evidence that it is warranted or he or she will refrain from acts of domestic violence.
- Allows courts to require respondents to pay the costs and attorneys fees of petitioners.

Hearing Date: 1/31/11

Staff: Kelly Pfundheller (786-7289).

Background:

A victim of domestic violence (the petitioner) can obtain a domestic violence protection order against a respondent. The order can provide several types of relief, including electronic monitoring, domestic violence perpetrator treatment, and a requirement that the respondent refrain from contacting the petitioner. Violation of a domestic violence protection order is a gross misdemeanor unless the respondent has two prior convictions for violating a domestic

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violence protection order or other similar federal or out-of-state order, in which case the violation is a class C felony.

If the court grants a protection order for a fixed time period, the petitioner may apply for renewal of the order. The court must grant a renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume acts of domestic violence against the petitioner, the petitioner's children, family, and household members when the order expires.

The court may issue an order exceeding one year or issue a permanent order if it finds that the respondent is likely to resume acts of domestic violence. A temporary or permanent order may be modified or terminated upon a motion by either the petitioner or respondent. However, the statute does not specify the grounds upon which modification should be granted or assign the burden of proof to one party or the other.

In a recent case, *In Re Marriage of Freeman*, 169 Wn.2d 664, 239 P.3d 557 (2010), the Washington Supreme Court (Court) reviewed the denial of a respondent's motion for termination of a protection order. The Court determined that a respondent bears the same burden of proof in a motion for termination or modification as is required to overcome a petition for renewal. The respondent must prove by a preponderance of the evidence that he or she will refrain from resuming acts of domestic violence. In granting the motion to terminate, the Court declined to order the respondent to pay the petitioner's costs and attorneys' fees.

Summary of Bill:

The Legislature finds that the Court's decision in *In Re Marriage of Freeman* established incorrect standards for modifying and terminating domestic violence protection orders.

Motion and Affidavit.

A respondent's motion to modify or terminate a permanent protection order or an order issued for a period of greater than two years must include an affidavit stating the facts in support of modification or termination. The petitioner may file opposing affidavits. Upon reviewing the affidavits, the court must dismiss the motion unless there is adequate cause for a hearing.

Modification and Termination.

In seeking a modification to a permanent protection order or an order issued for a period of greater than two years, the respondent bears the burden of proving by clear and convincing evidence that modification is warranted and would not diminish the protections provided to the petitioner.

If the motion requests termination, the respondent must prove by clear and convincing evidence that there has been a substantial change in circumstances such that the respondent is not likely to resume acts of domestic violence. A "substantial change in circumstances" means that the respondent has taken substantial steps to prevent the recurrence of domestic violence against the petitioner and other persons protected by the order. The court is prohibited from considering certain factors, including the passage of time since the order was entered, the inconvenience of

the order on the respondent, and the respondent's relocation to a new residence that is a farther distance from the petitioner.

In either a respondent's motion for modification or termination, the petitioner bears no burden of proving that he or she has a current reasonable fear of imminent harm by the respondent.

Costs and Attorneys' Fees.

The court may require a respondent to pay court costs and service fees in addition to the petitioner's costs and attorneys' fees incurred in responding to the motion.

Service.

A motion to modify or terminate an order must be personally served to the nonmoving party no fewer than five days prior to the hearing.

When a respondent files a motion for modification or termination of a permanent protection order or an order issued for a period of greater than two years, the sheriff or other local law enforcement must personally serve the petitioner. If the petitioner files the motion, he or she can achieve service through law enforcement or through another private party.

Appropriation: None.

Fiscal Note: Requested on 1/25/2011.

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