

SENATE BILL REPORT

SHB 1565

As of March 11, 2011

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: House Committee on Judiciary (originally sponsored by Representatives Frockt, Rodne, Pedersen, Eddy, Goodman, Roberts, Walsh, Green, Jacks, Fitzgibbon, Reykdal, Kenney, Stanford, Billig and Kelley).

Brief History: Passed House: 3/01/11, 97-0.

Committee Activity: Human Services & Corrections: 3/08/11.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Staff: Jennifer Strus (786-7316)

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 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.

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.

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 considered many factors, including the passage of time since the order was entered and the relocation of the respondent to a geographic area far from the petitioner. The Court declined to order the respondent to pay the petitioner's costs and attorneys' fees.

Summary of Bill: Motion and Affidavit. A respondent's motion for modification or termination of a protection order must include an affidavit stating the facts in support of modifying or terminating the order. The petitioner may file opposing affidavits. Upon reviewing the affidavits, the court must dismiss the motion unless there is adequate cause for a hearing.

Standard of Proof. If the respondent's motion is for termination or the protection order, the respondent bears the burden of proving by a preponderance of the evidence that there has been a substantial change in circumstances such that the respondent is not likely to resume acts of domestic violence. In determining whether there has been a substantial change in circumstances, the court may consider the following factors:

- whether the respondent has committed or threatened domestic violence, sexual assault, stalking, or other violent acts since the protection order was entered;
- whether the respondent has violated the terms of the protection order, and the time that has passed since the entry of the order;
- whether the respondent has been convicted of criminal activity since the protection order was entered;
- whether the respondent has either acknowledged responsibility for the acts of domestic violence that resulted in entry of the protection order or successfully completed domestic violence perpetrator treatment or counseling;
- whether the respondent has a continuing involvement with drug or alcoholic abuse, if such abuse was a factor in the protection order;
- whether the petitioner consents to terminating the protection order, provided that consent is given voluntarily and knowingly;
- whether the respondent or petitioner has relocated to an area more distance from the other party, giving due consideration to the fact that acts of domestic violence may be committed from any distance; and
- other factors relating to a substantial change in circumstances.

The court may not grant a motion solely based on the fact that time has passed without violations of the order or that the respondent or petitioner has relocated to an area more distant from the other party. Regardless of whether there is a substantial change in circumstances, the court may decline to terminate a protection order if it finds that the acts of domestic violence that brought about the order were of such severity that the order should not be terminated.

If the respondent's motion is for modification of the order, the respondent must prove by a preponderance of the evidence that modification is warranted and would not diminish the

protections provided to the petitioner. If modifying the protection order would reduce the duration of the order or would eliminate provisions that restrain the respondent from harassing, stalking, threatening, or committing other acts of domestic violence, the court must consider the factors relating to whether there has been a substantial change in circumstances.

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

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 on the nonmoving party no fewer than five days prior to the hearing. When a respondent files a motion for modification or termination, a licensed process server, sheriff, or other local law enforcement must personally serve the petitioner. If the petitioner files the motion, he or she can achieve service through another private party.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: There was concern that in the court case, *In re Marriage of Freeman*, the court shifted the burden of proof in a motion to terminate a protective order to the woman to prove that she still has reason to fear the respondent in order to continue the protective order. There is no guidance in the statute currently to assist courts in making these decisions, and this bill was introduced to provide the courts with that guidance. There was also some concern that the court in *Freeman* also looked at the time that had passed since the order was entered and whether the distance the petitioner and respondent lived apart at the time of the modification motion and relied too heavily on these factors. We want to make sure the factors in statute to guide the court in its decision-making are research-based and are evidence of the characteristics of people most likely to commit future domestic violence. There are factors a court must consider when deciding to issue an initial protective order. Most protective orders are not permanent but rather are for less than one year.

CON: There are no standards in the law now that guide a court in its decision whether to issue an initial protection order, so we should start with this rather than at the back end of the system. Also, the bill calls for an adequate cause hearing but does not define what this is.

Persons Testifying: PRO: Representative Frockt, prime sponsor; Grace Huang, Washington State Coalition Against Domestic Violence; David Ward, Legal Voice.

CON: Lisa Scott, Taking Action Against Bias in the System.