

SENATE BILL REPORT

SB 6511

As of February 6, 2012

Title: An act relating to court procedures for review of petitions for protection orders.

Brief Description: Concerning court procedures for review of petitions for protection orders.

Sponsors: Senators Stevens and Hargrove.

Brief History:

Committee Activity: Human Services & Corrections: 2/02/12.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Staff: Kevin Black (786-7747)

Background: Any person may petition a court for an anti-harassment protection order, domestic violence protection order, or a protection order requested as part of a petition for dissolution, non-parental child custody, or to establish parentage. A court may grant a temporary 14-day protection order based upon an ex parte petition. In order to obtain an order of protection beyond 14 days, the petitioner must request a court hearing and provide personal service of notice upon the respondent not less than five court days before the hearing. The temporary order of protection may be extended for limited periods if service is not immediately successful. Following the hearing, a court may grant relief in the form of an order of protection for a fixed period of time or, if it determines that harassment or domestic violence is likely to resume when the order expires, may enter a permanent order of protection. An order restraining the respondent from contacting the respondent's minor children may be entered for a fixed period of no longer than one year.

Summary of Bill: The rules of evidence must be strictly observed in a hearing on a petition for a protection order. The parties and any witnesses must be placed under oath prior to testimony. The judge must disclose to all parties any information other than personally identifying information which the judge reviews from any criminal or civil database related to the petition.

Appropriation: None.

Fiscal Note: Not requested.

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.

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: It is important to keep persons safe from domestic violence. There are abuses, however, when protection orders are used as a weapon, or used for other inappropriate reasons. A protection order can be used just to get a father out of the life of his child. When domestic violence is alleged, custody is more likely to be awarded to the mother. People know this, and some exploit it, even sometimes at the advice of attorneys who are unethical. There are no rules in domestic violence proceedings. Inappropriate protection order applications divert resources away from protection for victims who are in need and into contentious divorce situations. Applying basic rules of evidence would make a change, and should not be too much to ask, considering what is at stake. Persons who are subject to false allegations are victims of domestic violence. Protection orders cause people to lose their rights to firearms, lose careers and opportunities for advancement, and lose access to their children. Anti-harassment orders have the same deleterious effect. Groups in the community exist which train people how to use the domestic violence system to their advantage. In a contested hearing, a sworn affidavit should be required. The evidentiary problems are being exaggerated by opponents of this bill. The courts do not give equal time to men and women in these proceedings. Entrapment is common in these cases. Criminal charges are brought in situations where the order should not have been entered in the first place, but the appropriateness of the order cannot be argued. This process should have rules. Change is overdue. Judges and commissioner know the rules of evidence and can help pro se litigants. Petitioners have the assistance of domestic violence advocates in every county in Washington; it's the respondents who lack help. These changes would help real victims by avoiding false allegations. It's critical to preserve constitutional rights. We should take the time needed to respect rights and the rule of law. Limiting the right of courts to view electronic records and requiring disclosure of what is reviewed to litigants is very important. Defending yourself against spurious protection order petitions is very expensive.

CON: It is uncommon for a petitioner to have free legal aid available in a domestic violence matter. A protection order proceeding should be rapid, efficient, and easily accessible to pro se litigants. Many kinds of proceedings are exempt from the evidence rules. Victims would not be able to have the court consider medical records or text messages for lack of proper authentication. Petitioners are in more danger of losing their rights in court because respondents are more likely to have attorneys. Applying the rules of evidence would add costs for subpoenas and witness fees. If collateral witnesses are allowed, the hearings would take much longer. Domestic violence is an underreported crime. Pro se litigants have great difficulty applying the rules of evidence in contested family law cases.

OTHER: We don't object to requiring oaths, and we agree the court should have reliable evidence when making decisions. The problem is that the vast majority of litigants are unrepresented, and cannot reasonably be expected to follow the rules of evidence without legal training. Protection orders are effective in reducing physical abuse. Our concern is for people to have access to this protection when they need it.

Persons Testifying: PRO: Senator Stevens, prime sponsor; Gregory McKell, Bruce Fischer, Katherine Roth, Keith Galbraith, Dwayne Humeny, Kimberly Denhem, Rob Gropper, Andy Maris, citizens; Mark Cavener, Chris Hupy, WA Domestic Violence Commission; Stephen Pigeon, attorney; John Sinclair, WA Defender Assn., WA Assn. of Criminal Defense Lawyers; Lisa Scott, Taking Action Against Violence in the System; Mark Mahnkey, WA Civil Rights Council.

CON: Leslie Savina, Northwest Justice Project; Keith Galbraith, Family Renewal Shelter; Brandy Anderson, Eastside Legal Assistance Program; David Ward, Legal Voice.

OTHER: Grace Huang, WA State Coalition Against Domestic Violence.