
SUBSTITUTE HOUSE BILL 1565

State of Washington

62nd Legislature

2011 Regular Session

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

READ FIRST TIME 02/17/11.

1 AN ACT Relating to the termination or modification of domestic
2 violence protection orders; amending RCW 26.50.130; and creating a new
3 section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that civil domestic
6 violence protection orders are an essential tool for interrupting an
7 abuser's ability to perpetrate domestic violence. The legislature has
8 authorized courts to enter permanent or fixed term domestic violence
9 protection orders if the court finds that the respondent is likely to
10 resume acts of domestic violence when the order expires. However, the
11 legislature has not established procedures or guidelines for
12 terminating or modifying a protection order after it is entered.

13 The legislature finds that some of the factors articulated in the
14 Washington supreme court's decision in *In re Marriage of Freeman*, 169
15 Wn.2d 664, 239 P.3d 557 (2010), for terminating or modifying domestic
16 violence protection orders do not demonstrate that a restrained person
17 is unlikely to resume acts of domestic violence when the order expires,
18 and place an improper burden on the person protected by the order. By

1 this act, the legislature establishes procedures and guidelines for
2 determining whether a domestic violence protection order should be
3 terminated or modified.

4 **Sec. 2.** RCW 26.50.130 and 2008 c 287 s 3 are each amended to read
5 as follows:

6 (1) Upon (~~application~~) a motion with notice to all parties and
7 after a hearing, the court may modify the terms of an existing order
8 for protection or may terminate an existing order for protection.

9 (2) A respondent's motion to modify or terminate an order for
10 protection that is permanent or issued for a fixed period exceeding two
11 years must include a declaration setting forth facts supporting the
12 requested order for termination or modification. The motion and
13 declaration must be served according to subsection (7) of this section.
14 The nonmoving parties to the proceeding may file opposing declarations.
15 The court shall deny the motion unless it finds that adequate cause for
16 hearing the motion is established by the declarations. If the court
17 finds that the respondent established adequate cause, the court shall
18 set a date for hearing the respondent's motion.

19 (3)(a) The court may not terminate an order for protection that is
20 permanent or issued for a fixed period exceeding two years upon a
21 motion of the respondent unless the respondent proves by a
22 preponderance of the evidence that there has been a substantial change
23 in circumstances such that the respondent is not likely to resume acts
24 of domestic violence against the petitioner or those persons protected
25 by the protection order if the order is terminated. In a motion by the
26 respondent for termination of an order for protection that is permanent
27 or issued for a fixed period exceeding two years, the petitioner bears
28 no burden of proving that he or she has a current reasonable fear of
29 imminent harm by the respondent.

30 (b) For the purposes of this subsection, a court shall determine
31 whether there has been a "substantial change in circumstances" by
32 considering only factors which address whether the respondent is likely
33 to commit future acts of domestic violence against the petitioner or
34 those persons protected by the protection order.

35 (c) In determining whether there has been a substantial change in
36 circumstances the court may consider the following unweighted factors,

1 and no inference is to be drawn from the order in which the factors are
2 listed:

3 (i) Whether the respondent has committed or threatened domestic
4 violence, sexual assault, stalking, or other violent acts since the
5 protection order was entered;

6 (ii) Whether the respondent has violated the terms of the
7 protection order, and the time that has passed since the entry of the
8 order;

9 (iii) Whether the respondent has exhibited suicidal ideation or
10 attempts since the protection order was entered;

11 (iv) Whether the respondent has been convicted of criminal activity
12 since the protection order was entered;

13 (v) Whether the respondent has either acknowledged responsibility
14 for the acts of domestic violence that resulted in entry of the
15 protection order or successfully completed domestic violence
16 perpetrator treatment or counseling since the protection order was
17 entered;

18 (vi) Whether the respondent has a continuing involvement with drug
19 or alcohol abuse, if such abuse was a factor in the protection order;

20 (vii) Whether the petitioner consents to terminating the protection
21 order, provided that consent is given voluntarily and knowingly;

22 (viii) Whether the respondent or petitioner has relocated to an
23 area more distant from the other party, giving due consideration to the
24 fact that acts of domestic violence may be committed from any distance;

25 (ix) Other factors relating to a substantial change in
26 circumstances.

27 (d) In determining whether there has been a substantial change in
28 circumstances, the court may not base its determination solely on: (i)
29 The fact that time has passed without a violation of the order; or (ii)
30 the fact that the respondent or petitioner has relocated to an area
31 more distant from the other party.

32 (e) Regardless of whether there is a substantial change in
33 circumstances, the court may decline to terminate a protection order if
34 it finds that the acts of domestic violence that resulted in the
35 issuance of the protection order were of such severity that the order
36 should not be terminated.

37 (4) The court may not modify an order for protection that is
38 permanent or issued for a fixed period exceeding two years upon a

1 motion of the respondent unless the respondent proves by a
2 preponderance of the evidence that the requested modification is
3 warranted. If the requested modification would reduce the duration of
4 the protection order or would eliminate provisions in the protection
5 order restraining the respondent from harassing, stalking, threatening,
6 or committing other acts of domestic violence against the petitioner or
7 the petitioner's children or family or household members or other
8 persons protected by the order, the court shall consider the factors in
9 subsection (3)(c) of this section in determining whether the protection
10 order should be modified. Upon a motion by the respondent for
11 modification of an order for protection that is permanent or issued for
12 a fixed period exceeding two years, the petitioner bears no burden of
13 proving that he or she has a current reasonable fear of imminent harm
14 by the respondent.

15 (5) Upon a motion by a petitioner, the court may modify or
16 terminate an existing order for protection. The court shall hear the
17 motion without an adequate cause hearing.

18 (6) A court may require the respondent to pay court costs and
19 service fees, as established by the county or municipality incurring
20 the expense and to pay the petitioner for costs incurred in responding
21 to a motion to terminate or modify a protection order, including
22 reasonable attorneys' fees.

23 (7) Except as provided in RCW 26.50.085 and 26.50.123, ((personal
24 service shall be made upon)) a motion to modify or terminate an order
25 for protection must be personally served on the nonmoving party not
26 less than five court days prior to the hearing ((to modify)).

27 (a) If a moving party seeks to modify or terminate an order for
28 protection that is permanent or issued for a fixed period exceeding two
29 years, the sheriff of the county or the peace officers of the
30 municipality in which the nonmoving party resides or a licensed process
31 server shall serve the nonmoving party personally except when a
32 petitioner is the moving party and elects to have the nonmoving party
33 served by a private party.

34 (b) If the sheriff, municipal peace officer, or licensed process
35 server cannot complete service upon the nonmoving party within ten
36 days, the sheriff, municipal peace officer, or licensed process server
37 shall notify the moving party. The moving party shall provide

1 information sufficient to permit notification by the sheriff, municipal
2 peace officer, or licensed process server.

3 (c) If timely personal service cannot be made, the court shall set
4 a new hearing date and shall either require an additional attempt at
5 obtaining personal service or permit service by publication as provided
6 in RCW 26.50.085 or service by mail as provided in RCW 26.50.123.

7 ~~((b))~~ (d) The court shall not require more than two attempts at
8 obtaining personal service and shall permit service by publication or
9 by mail unless the moving party requests additional time to attempt
10 personal service.

11 ~~((e))~~ (e) If the court permits service by publication or by mail,
12 the court shall set the hearing date not later than twenty-four days
13 from the date of the order permitting service by publication or by
14 mail.

15 ~~((3))~~ (8) Municipal police departments serving documents as
16 required under this chapter may recover from a respondent ordered to
17 pay fees under subsection (6) of this section the same fees for service
18 and mileage authorized by RCW 36.18.040 to be collected by sheriffs.

19 (10) In any situation where an order is terminated or modified
20 before its expiration date, the clerk of the court shall forward on or
21 before the next judicial day a true copy of the modified order or the
22 termination order to the appropriate law enforcement agency specified
23 in the modified or termination order. Upon receipt of the order, the
24 law enforcement agency shall promptly enter it in the law enforcement
25 information system.

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