
HOUSE BILL 1565

State of Washington

62nd Legislature

2011 Regular Session

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

Read first time 01/25/11. Referred to Committee on Judiciary.

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 the Washington supreme court's decision
14 in *In re Marriage of Freeman*, 169 Wn.2d 664, 239 P.3d 557 (2010),
15 established incorrect standards for terminating or modifying domestic
16 violence protection orders. By this act, the legislature establishes
17 procedures and guidelines for determining whether a domestic violence
18 protection order should be terminated or modified.

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

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

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

16 (3)(a) The court may not terminate an order for protection that is
17 permanent or issued for a fixed period exceeding two years upon a
18 motion of the respondent unless the respondent proves by clear and
19 convincing evidence that there has been a substantial change in
20 circumstances such that the respondent is not likely to resume acts of
21 domestic violence against the petitioner or the petitioner's children
22 or family or household members or other persons protected by the
23 protection order if the order is terminated. Upon a motion by the
24 respondent for termination of an order for protection that is permanent
25 or issued for a fixed period exceeding two years:

26 (i) The respondent bears the burden of proof; and

27 (ii) The petitioner bears no burden of proving that he or she has
28 a current reasonable fear of imminent harm by the respondent.

29 (b) For the purposes of this subsection (3), a "substantial change
30 in circumstances" means that the respondent has taken substantial steps
31 to prevent the recurrence of acts of domestic violence against the
32 petitioner or the petitioner's children or family or household members
33 or other persons protected by the protection order. The following
34 factors may not be considered in determining whether there has been a
35 substantial change in circumstances:

36 (i) The passage of time since the order was entered;

37 (ii) The burden the order places on the respondent; or

1 (iii) The relocation of the respondent or the petitioner to a
2 residence that is more distant from the other party.

3 (4) The court may not modify an order for protection that is
4 permanent or issued for a fixed period exceeding two years upon a
5 motion of the respondent unless the respondent proves by clear and
6 convincing evidence that the requested modification is warranted and
7 would not substantially diminish the protections provided by the order
8 to the petitioner or the petitioner's children or family or household
9 members or other persons protected by the protection order. Upon a
10 motion by the respondent for modification of an order for protection
11 that is permanent or issued for a fixed period exceeding two years:

12 (a) The respondent bears the burden of proof; and

13 (b) The petitioner bears no burden of proving that he or she has a
14 current reasonable fear of imminent harm 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 the administrative
19 court costs and service fees, as established by the county or
20 municipality incurring the expense and to pay the petitioner for costs
21 incurred in responding to a motion to terminate or modify a protection
22 order, including 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 shall serve the
31 nonmoving party personally except when a petitioner is the moving party
32 and elects to have the nonmoving party served by a private party.

33 (b) If the sheriff or municipal peace officer cannot complete
34 service upon the nonmoving party within ten days, the sheriff or
35 municipal peace officer shall notify the moving party. The moving
36 party shall provide information sufficient to permit notification by
37 the sheriff or municipal peace officer.

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

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

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

13 ~~((3))~~ (8) Returns of service under this chapter must be made in
14 accordance with the applicable court rules.

15 (9) Municipal police departments serving documents as required
16 under this chapter may collect from respondents ordered to pay fees
17 under subsection (6) of this section the same fees for service and
18 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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