

SENATE BILL REPORT

SHB 1307

As Reported by Senate Committee On:
Human Services & Corrections, March 26, 2013

Title: An act relating to sexual assault protection orders.

Brief Description: Concerning sexual assault protection orders.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Goodman, Lytton, Wylie, Jinkins, Cody, Roberts, Santos and Moscoso).

Brief History: Passed House: 2/25/13, 92-0.

Committee Activity: Human Services & Corrections: 3/14/13, 3/26/13 [DP].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass.

Signed by Senators Pearson, Vice Chair; Darneille, Ranking Member; Baumgartner, Hargrove, Harper and Padden.

Staff: Joan Miller (786-7784)

Background: A person who is a victim of nonconsensual sexual conduct or penetration, including a single incident, may file a petition for a sexual assault protection order (SAPO). These orders provide a remedy for victims of sexual assault who do not qualify for a domestic violence protection order. A third party may file on behalf of a victim who is a minor, a vulnerable adult, or any other adult who cannot file a petition due to age, disability, health, or inaccessibility. Persons 16 years of age or older may file a petition on their own behalf, without the assistance of an appointed guardian ad litem.

The respondent must be personally served with the petition and notice of the hearing no fewer than five court days prior to a full hearing on an initial petition or prior to a hearing for renewal or modification of an existing order. If timely personal service cannot be made to the respondent, then the court must set a new hearing date and require additional service attempts. Final orders must also be personally served on the respondent. Neither notice of a SAPO petition and hearing nor a final order may be served by publication or mail.

Summary of Bill: Appointment of a Guardian. If the court deems that the appointment of a guardian ad litem is necessary, then the appointment must be at no cost to either party.

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.

Service of Process and Hearings. Upon receipt of a SAPO petition, the court must order a hearing to be held not later than 14 days from the date of the order. If timely personal service cannot be made, then the court must set a new hearing date and either require additional attempts at personal service or permit service by publication or mail. A court may not require more than two attempts at personal service. If the court permits service by publication or mail, then the new hearing date must be set not later than 24 days from the date of the order. If service of process by publication or mail is allowed for notice of a hearing and temporary order, then the court may also permit service by publication or mail for notice of a final SAPO. These same procedures must also be used if the court receives a motion to modify the existing terms of a SAPO or if a motion for a renewal of any ex parte temporary or final SAPO is contested.

Service by Publication. Service by publication is allowed when the sheriff or municipal peace officer files an affidavit stating that personal service could not be completed, the petitioner files an affidavit stating a belief that the respondent is hiding to avoid service and that more attempts at personal service will be futile, the server mailed a copy of the summons to the respondent's last known address, and the court finds that reasonable grounds exist to believe the respondent is hiding to avoid service and more attempts at personal service would be futile or unduly burdensome. The publication must be made in a newspaper of general circulation in the county where the petition was brought and in the county of the respondent's last known address. The newspaper selected must be one of the three most widely circulated papers in the county. Service is considered complete when the publication has been made once per week for three consecutive weeks.

Service by Mail. Service by mail is allowed under the same circumstances justifying service by publication if the serving party files an affidavit that states facts from which the court can determine that service by mail is just as likely to provide actual notice as service by publication and states the serving party is unable to afford the cost of service by publication. Two copies of the summons must be mailed to the respondent's last known address, one by ordinary first-class mail and one by a form of mail that requires a signed receipt. Service is considered complete when both copies are mailed.

Ex Parte Orders. If an ex parte temporary SAPO is issued and service of process is made by publication or mail, then the hearing must be set for not later than 24 days from the date of the order. Additionally, the court must reissue the ex parte order not to exceed another 24 days from the date of reissuing the ex parte order.

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: This bill attempts to clean up and make more useful the sexual assault protection order that the Legislature passed several years ago.

Personal service has been a significant barrier for victims of sexual assault. If you are an alleged sex offender, you are probably going to try to avoid personal service. This bill would make it easier for victims to serve process and to renew protection orders.

OTHER: The Washington State Process Servers Association supports this bill, but some small tweaks would make it better. Everyone is entitled to actual or constructive notice. We must be careful that we are not giving defendants an out by arguing that they did not receive notice. Studies, although not contemporary, show that service by mail fails twice as much as personal service. Further, service by mail does not always provide the deterrent effect that personal service does. The judge should be able to allow more than two attempts at personal service and should have the discretion to require a registered process server or law enforcement officer to attempt personal service on the respondent.

Persons Testifying: PRO: Representative Goodman, prime sponsor; Lonnie Johns-Brown, WA Coalition of Sexual Assault Programs.

OTHER: Steve Lindstrom, WA State Process Servers Assn.