

SENATE BILL REPORT

SB 5175

As Reported by Senate Committee On:
Human Services & Corrections, February 7, 2013

Title: An act relating to sexual assault protection orders.

Brief Description: Concerning sexual assault protection orders.

Sponsors: Senators Hargrove, Harper, Darneille, Keiser and Shin.

Brief History:

Committee Activity: Human Services & Corrections: 1/31/13, 2/07/13 [DP].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass.

Signed by Senators Carrell, Chair; 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). 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. Under current law, if timely personal service cannot be made to the respondent, then the court must set a new hearing date and require additional service attempts. Notice of a SAPO petition and hearing may not 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, the appointment must be at no cost to either party.

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.

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.

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 has 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 a 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 have been 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: Not requested.

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 is an imperative piece of legislation to better protect survivors of sexual violence. Since SAPOs have been available, thousands of survivors have come forward to seek that type of protection; however, that has not been without challenge, mainly due to the service of process issue. Statewide, 63 percent of survivors surveyed statewide said that the notice requirement was a significant barrier to getting a protection order. SAPOs are the only type of protection order that requires personal service made to the respondent. Antiharassment, domestic violence, and vulnerable adult protection orders all allow service by publication or service by mail. Survivors have had to come to court repeatedly to renew orders. In King County, one in three cases were

continued, requiring victims to come in every two weeks to renew a temporary order. Because of the inconvenience and anxiety these trips to court cause, victims often drop out of the process. Courts often dismiss cases, defeating the purpose. Sexual assault victims should not have to jump through more hoops than other types of victims.

CON: As a policy matter, the Washington Association of Criminal Defense Lawyers (WACDL) and the Washington Defender Association (WDA) oppose notice by publication for a protection order because violation of the order could lead to criminal charges, even for a respondent who never received actual notice of the hearing. There are reasons sometimes why people simply do not get notice of these orders. As an alternative, the mandatory language requiring only two attempts at personal service should be removed and left to the judge's discretion.

Persons Testifying: PRO: Laura Jones, King County Sexual Assault Resource Center; Andrea Piper-Wentland, WA Coalition of Sexual Assault Programs.

CON: Amy Muth, WACDL, WDA.