
SENATE BILL 5175

State of Washington

63rd Legislature

2013 Regular Session

By Senators Hargrove, Harper, Darneille, Keiser, and Shin

Read first time 01/22/13. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to sexual assault protection orders; amending RCW
2 7.90.040, 7.90.050, 7.90.120, 7.90.140, and 7.90.170; adding new
3 sections to chapter 7.90 RCW; and creating a new section.

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

5 **Sec. 1.** RCW 7.90.040 and 2006 c 138 s 4 are each amended to read
6 as follows:

7 (1) Any person may seek relief under this chapter by filing a
8 petition with a court alleging that the person has been the victim of
9 nonconsensual sexual conduct or nonconsensual sexual penetration
10 committed by the respondent.

11 (2) A person under eighteen years of age who is sixteen years of
12 age or older may seek relief under this chapter and is not required to
13 seek relief by a guardian or next friend.

14 (3) No guardian or guardian ad litem need be appointed on behalf of
15 a respondent to an action under this chapter who is under eighteen
16 years of age if such respondent is sixteen years of age or older.

17 (4) The court may, if it deems necessary, appoint a guardian ad
18 litem for a petitioner or respondent who is a party to an action under
19 this chapter. The appointment shall be at no cost to either party.

1 (5) Jurisdiction of the courts over proceedings under this chapter
2 shall be the same as jurisdiction over domestic violence protection
3 orders under RCW 26.50.020(5).

4 (6) An action under this chapter shall be filed in the county or
5 the municipality where the petitioner resides.

6 **Sec. 2.** RCW 7.90.050 and 2006 c 138 s 6 are each amended to read
7 as follows:

8 Upon receipt of the petition, the court shall order a hearing which
9 shall be held not later than fourteen days from the date of the order.
10 The court may schedule a hearing by telephone pursuant to local court
11 rule, to reasonably accommodate a disability, or in exceptional
12 circumstances to protect a petitioner from further nonconsensual sexual
13 conduct or nonconsensual sexual penetration. The court shall require
14 assurances of the petitioner's identity before conducting a telephonic
15 hearing. (~~Except as provided in RCW 7.90.110,~~) Personal service
16 shall be made upon the respondent not less than five court days prior
17 to the hearing. If timely personal service cannot be made, the court
18 shall set a new hearing date and shall either require additional
19 attempts at obtaining personal service or permit service by publication
20 as provided in section 6 of this act or service by mail as provided in
21 section 7 of this act. The court shall not require more than two
22 attempts at obtaining personal service and shall permit service by
23 publication or service by mail unless the petitioner requests
24 additional time to attempt personal service. If the court permits
25 service by publication or service by mail, the court shall set the
26 hearing date not later than twenty-four days from the date of the
27 order. The court may issue an ex parte temporary sexual assault order
28 pending the hearing as provided in RCW 7.90.110.

29 **Sec. 3.** RCW 7.90.120 and 2006 c 138 s 13 are each amended to read
30 as follows:

31 (1)(a) An ex parte temporary sexual assault protection order shall
32 be effective for a fixed period not to exceed fourteen days. A full
33 hearing, as provided in this chapter, shall be set for not later than
34 fourteen days from the issuance of the temporary order or not later
35 than twenty-four days if service by publication or service by mail is
36 permitted. If the court permits service by publication or service by

1 mail, the court shall also reissue the ex parte temporary protection
2 order not to exceed another twenty-four days from the date of reissuing
3 the ex parte protection order. Except as provided in RCW 7.90.050, or
4 section 6 or 7 of this act, the respondent shall be personally served
5 with a copy of the ex parte temporary sexual assault protection order
6 along with a copy of the petition and notice of the date set for the
7 hearing.

8 (b) Any ex parte temporary order issued under this section shall
9 contain the date and time of issuance and the expiration date and shall
10 be entered into a statewide judicial information system by the clerk of
11 the court within one judicial day after issuance.

12 (2) Except as otherwise provided in this section or RCW 7.90.150,
13 a final sexual assault protection order shall be effective for a fixed
14 period of time, not to exceed two years.

15 ~~(3) ((Any ex parte temporary or final sexual assault protection~~
16 ~~order may be renewed one or more times, as required. The petitioner~~
17 ~~may apply for renewal of the order by filing a petition for renewal at~~
18 ~~any time within the three months before the order expires. If the~~
19 ~~motion for renewal is uncontested and the petitioner seeks no~~
20 ~~modification of the order, the order may be renewed on the basis of the~~
21 ~~petitioner's motion or affidavit stating that there has been no~~
22 ~~material change in relevant circumstances since entry of the order and~~
23 ~~stating the reason for the requested renewal. Renewals may be granted~~
24 ~~only in open court.~~

25 ~~(4))~~ Any sexual assault protection order which would expire on a
26 court holiday shall instead expire at the close of the next court
27 business day.

28 ~~((+5))~~ (4) The practice of dismissing or suspending a criminal
29 prosecution in exchange for the issuance of a sexual assault protection
30 order undermines the purposes of this chapter. This section shall not
31 be construed as encouraging that practice.

32 NEW SECTION. Sec. 4. A new section is added to chapter 7.90 RCW
33 to read as follows:

34 (1) Any ex parte temporary or final sexual assault protection order
35 may be renewed one or more times, as required.

36 (2) The petitioner may apply for renewal of the order by filing a

1 motion for renewal at any time within the three months before the order
2 expires.

3 (3) If the motion for renewal is uncontested and the petitioner
4 seeks no modification of the order, the order may be renewed on the
5 basis of the petitioner's motion or affidavit stating that there has
6 been no material change in relevant circumstances since entry of the
7 order and stating the reason for the requested renewal.

8 (4)(a) If the motion is contested, upon receipt of the motion, the
9 court shall order that a hearing be held not later than fourteen days
10 from the date of the order.

11 (b) The court may schedule a hearing by telephone pursuant to local
12 court rule, to reasonably accommodate a disability, or in exceptional
13 circumstances to protect a petitioner from further nonconsensual sexual
14 conduct or nonconsensual sexual penetration. The court shall require
15 assurances of the petitioner's identity before conducting a telephonic
16 hearing.

17 (c) The respondent shall be personally served not less than five
18 court days prior to the hearing. If timely personal service cannot be
19 made, the court shall set a new hearing date and shall either require
20 additional attempts at obtaining personal service or permit service by
21 publication as provided in section 6 of this act or service by mail as
22 provided in section 7 of this act. The court shall not require more
23 than two attempts at obtaining personal service and shall permit
24 service by publication or service by mail unless the petitioner
25 requests additional time to attempt personal service. If the court
26 permits service by publication or service by mail, the court shall set
27 the hearing date not later than twenty-four days from the date of the
28 order.

29 (5) Renewals may be granted only in open court.

30 **Sec. 5.** RCW 7.90.140 and 2006 c 138 s 15 are each amended to read
31 as follows:

32 (1) An order issued under this chapter shall be personally served
33 upon the respondent, except as provided in subsection (6) of this
34 section.

35 (2) The sheriff of the county or the peace officers of the
36 municipality in which the respondent resides shall serve the respondent

1 personally unless the petitioner elects to have the respondent served
2 by a private party.

3 (3) If service by a sheriff or municipal peace officer is to be
4 used, the clerk of the court shall have a copy of any order issued
5 under this chapter forwarded on or before the next judicial day to the
6 appropriate law enforcement agency specified in the order for service
7 upon the respondent. Service of an order issued under this chapter
8 shall take precedence over the service of other documents unless they
9 are of a similar emergency nature.

10 (4) If the sheriff or municipal peace officer cannot complete
11 service upon the respondent within ten days, the sheriff or municipal
12 peace officer shall notify the petitioner. The petitioner shall
13 provide information sufficient to permit notification.

14 (5) Returns of service under this chapter shall be made in
15 accordance with the applicable court rules.

16 (6) If an order entered by the court recites that the respondent
17 appeared in person before the court, the necessity for further service
18 is waived and proof of service of that order is not necessary.

19 (7) If the court previously entered an order allowing service of
20 the notice of hearing and temporary order of protection by publication
21 under section 6 of this act or service by mail under section 7 of this
22 act, the court may permit service by publication or service by mail of
23 the order of protection issued under this chapter. Service by
24 publication must comply with the requirements of section 6 of this act
25 and service by mail must comply with the requirements of section 7 of
26 this act. The court order must state whether the court permitted
27 service by publication or service by mail.

28 NEW SECTION. Sec. 6. A new section is added to chapter 7.90 RCW
29 to read as follows:

30 (1) The court may order service by publication instead of personal
31 service under the following circumstances:

32 (a) The sheriff or municipal peace officer files an affidavit
33 stating that the officer was unable to complete personal service upon
34 the respondent. The affidavit must describe the number and type of
35 attempts the officer made to complete service;

36 (b) The petitioner files an affidavit stating that the petitioner

1 believes the respondent is hiding from the server to avoid service.
2 The petitioner's affidavit must state the reasons for the belief that
3 the respondent is avoiding service;

4 (c) The server has deposited a copy of the summons, in
5 substantially the form prescribed in subsection (3) of this section,
6 notice of hearing, and the ex parte order of protection in the post
7 office, directed to the respondent at the respondent's last known
8 address, unless the server states that he or she does not know the
9 respondent's address; and

10 (d) The court finds reasonable grounds exist to believe the
11 respondent is concealing himself or herself to avoid service, and that
12 further attempts to personally serve the respondent would be futile or
13 unduly burdensome.

14 (2) If the court orders service by publication, it shall also
15 reissue the temporary order of protection not to exceed another twenty-
16 four days from the date of reissuing the ex parte protection order and
17 order that service by publication be provided.

18 (3) The publication must be made in a newspaper of general
19 circulation in the county where the petition was brought and in the
20 county of the last known address of the respondent once a week for
21 three consecutive weeks. The newspaper selected must be one of the
22 three most widely circulated papers in the county. The publication of
23 summons must not be made until the court orders service by publication
24 under this section. Service of the summons is considered complete when
25 the publication has been made for three consecutive weeks. The summons
26 must be signed by the petitioner. The summons must contain the date of
27 the first publication, and must require the respondent upon whom
28 service by publication is desired, to appear and answer the petition on
29 the date set for the hearing. The summons must also contain a brief
30 statement of the reason for the petition and a summary of the
31 provisions under the ex parte order. The summons must be essentially
32 in the following form:

33 In the court of the state of Washington for
34 the county of

35, Petitioner

36 vs. No.

37, Respondent

1 The state of Washington to (respondent):

2 You are hereby summoned to appear on the day
3 of, (year), at a.m./p.m., and respond to
4 the petition. If you fail to respond, an order of protection
5 will be issued against you pursuant to the provisions of the
6 sexual assault protection order act, chapter 7.90 RCW, for
7 a minimum of one year from the date you are required to
8 appear. A temporary order of protection has been issued
9 against you, restraining you from the following: (Insert a
10 brief statement of the provisions of the ex parte order). A
11 copy of the petition, notice of hearing, and ex parte order
12 has been filed with the clerk of this court.

13
14 Petitioner

15 NEW SECTION. **Sec. 7.** A new section is added to chapter 7.90 RCW
16 to read as follows:

17 (1) In circumstances justifying service by publication under
18 section 6 of this act, if the serving party files an affidavit stating
19 facts from which the court determines that service by mail is just as
20 likely to give actual notice as service by publication and that the
21 serving party is unable to afford the cost of service by publication,
22 the court may order that service be made by mail. The service must be
23 made by any person over eighteen years of age, who is competent to be
24 a witness, other than a party, by mailing copies of the order and other
25 process to the party to be served at his or her last known address or
26 any other address determined by the court to be appropriate. Two
27 copies must be mailed, postage prepaid, one by ordinary first-class
28 mail and the other by a form of mail requiring a signed receipt showing
29 when and to whom it was delivered. The envelopes must bear the return
30 address of the sender.

31 (2) Proof of service under this section must be consistent with
32 court rules for civil proceedings.

33 (3) Service under this section may be used in the same manner and
34 has the same jurisdictional effect as service by publication for
35 purposes of this chapter. Service is deemed complete upon the mailing
36 of the two copies as prescribed in this section.

1 NEW SECTION. **Sec. 8.** Following completion of service by
2 publication as provided in section 6 of this act or service by mail as
3 provided in section 7 of this act, if the respondent fails to appear at
4 the hearing, the court may issue an order of protection as provided in
5 RCW 7.90.140. That order must be served pursuant to RCW 7.90.140 and
6 forwarded to the appropriate law enforcement agency pursuant to RCW
7 7.90.160.

8 **Sec. 9.** RCW 7.90.170 and 2006 c 138 s 18 are each amended to read
9 as follows:

10 (1) Upon ((application with notice to all parties and after a
11 hearing)) receipt of a motion to modify the terms of an existing sexual
12 assault protection order, the court ((may modify the terms of an
13 existing sexual assault protection order)) shall order that a hearing
14 be held not later than fourteen days from the date of the order. The
15 respondent shall be personally served not less than five days before
16 the hearing. If timely service cannot be made, the court shall set a
17 new hearing date and shall either require additional attempts at
18 obtaining personal service or permit service by publication as provided
19 in section 6 of this act or service by mail as provided in section 7 of
20 this act. If the court permits service by mail or service by
21 publication, the court shall set the new hearing date not later than
22 twenty-four days from the date of the order. If the order expires
23 because timely service cannot be made, the court shall grant an ex
24 parte order of protection as provided in RCW 7.90.110. The court may
25 modify the protection order for another fixed time period or may enter
26 a permanent order as provided in RCW 7.90.120.

27 (2) In any situation where an order is terminated or modified
28 before its expiration date, the clerk of the court shall forward on or
29 before the next judicial day a true copy of the modified order or the
30 termination order to the appropriate law enforcement agency specified
31 in the modified or termination order. Upon receipt of the order, the
32 law enforcement agency shall promptly enter it in the computer-based
33 criminal intelligence information system, or if the order is
34 terminated, remove the order from the computer-based criminal
35 intelligence information system.

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