

HB 2033 - H AMD 737

By Representative Goodman

ADOPTED 02/15/2016

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 7.90.120 and 2013 c 74 s 3 are each amended to read
4 as follows:

5 (1)(a) An ex parte temporary sexual assault protection order
6 shall be effective for a fixed period not to exceed fourteen days. A
7 full hearing, as provided in this chapter, shall be set for not later
8 than fourteen days from the issuance of the temporary order or not
9 later than twenty-four days if service by publication or service by
10 mail is permitted. If the court permits service by publication or
11 service by mail, the court shall also reissue the ex parte temporary
12 protection order not to exceed another twenty-four days from the date
13 of reissuing the ex parte protection order. Except as provided in RCW
14 7.90.050, 7.90.052, or 7.90.053, the respondent shall be personally
15 served with a copy of the ex parte temporary sexual assault
16 protection order along with a copy of the petition and notice of the
17 date set for the hearing.

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

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

25 (3) 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 (4) The practice of dismissing or suspending a criminal
29 prosecution in exchange for the issuance of a sexual assault
30 protection order undermines the purposes of this chapter. This
31 section shall not be construed as encouraging that practice.

1 **Sec. 2.** RCW 7.90.121 and 2013 c 74 s 4 are each amended to read
2 as follows:

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

5 (2) The petitioner may apply for renewal of the order by filing a
6 motion for renewal at any time within the three months before the
7 order expires. The motion for renewal shall state the reasons why the
8 petitioner seeks to renew the protection order.

9 ~~(3) ((If the motion for renewal is uncontested and the petitioner~~
10 ~~seeks no modification of the order, the order may be renewed on the~~
11 ~~basis of the petitioner's motion or affidavit stating that there has~~
12 ~~been no material change in relevant circumstances since entry of the~~
13 ~~order and stating the reason for the requested renewal.))~~ (a) The
14 court shall grant the motion for renewal unless the respondent proves
15 by a preponderance of the evidence that there has been a material
16 change in circumstances such that the respondent is not likely to
17 engage in or attempt to engage in physical or nonphysical contact
18 with the petitioner when the order expires.

19 (b) For purposes of this subsection (3), a court shall determine
20 whether there has been a material change in circumstances by
21 considering only factors which address whether the respondent is
22 likely to engage in or attempt to engage in physical or nonphysical
23 contact with the petitioner when the order expires. The passage of
24 time and compliance with the existing protection order shall not,
25 alone, be sufficient to meet this burden of proof. The court may
26 renew the sexual assault protection order for another fixed time
27 period or may enter a permanent order as provided in this section.

28 (c) In determining whether there has been a material change in
29 circumstances, the court may consider the following unweighted
30 factors, and no inference is to be drawn from the order in which the
31 factors are listed:

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

35 (ii) Whether the respondent has violated the terms of the
36 protection order and the time that has passed since the entry of the
37 order;

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

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

3 (v) Whether the respondent has either acknowledged responsibility
4 for acts of sexual assault that resulted in entry of the protection
5 order or successfully completed sexual assault perpetrator treatment
6 or counseling since the protection order was entered;

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

10 (vii) Whether the respondent or petitioner has relocated to an
11 area more distant from the other party, giving due consideration to
12 the fact that acts of sexual assault may be committed from any
13 distance such as via cybercrime;

14 (viii) Other factors relating to a material change in
15 circumstances.

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

19 (b) The court may schedule a hearing by telephone pursuant to
20 local court rule, to reasonably accommodate a disability, or in
21 exceptional circumstances to protect a petitioner from further
22 nonconsensual sexual conduct or nonconsensual sexual penetration. The
23 court shall require assurances of the petitioner's identity before
24 conducting a telephonic hearing.

25 (c) The respondent shall be personally served not less than five
26 court days prior to the hearing. If timely personal service cannot be
27 made, the court shall set a new hearing date and shall either require
28 additional attempts at obtaining personal service or permit service
29 by publication as provided in RCW 7.90.052 or service by mail as
30 provided in RCW 7.90.053. The court shall not require more than two
31 attempts at obtaining personal service and shall permit service by
32 publication or service by mail unless the petitioner requests
33 additional time to attempt personal service. If the court permits
34 service by publication or service by mail, the court shall set the
35 hearing date not later than twenty-four days from the date of the
36 order.

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

38 Correct the title.

EFFECT: The amendment makes the following changes:

(1) Requires a respondent, in order to contest the renewal of a sexual assault protection order, to prove that there has been a material change in circumstances such that the respondent is not likely to contact or attempt to contact the petitioner (the underlying bill requires the respondent to prove that the respondent will not contact or attempt to contact the petitioner);

(2) States that the court's determination of whether or not there has been a material change in circumstances must be based only on a consideration of factors that address whether the respondent is likely to contact or attempt to contact the petitioner; and

(3) Provides the court with a list of factors to consider in determining whether there has been a material change in circumstances.

--- END ---