

HOUSE BILL REPORT

EHB 2033

As Passed House:
February 15, 2016

Title: An act relating to sexual assault protection orders.

Brief Description: Concerning sexual assault protection orders.

Sponsors: Representatives Goodman, Rodne, Orwall, Jinkins, Griffey, Fey, Pollet and Ormsby.

Brief History:

Committee Activity:

Judiciary: 2/17/15, 2/19/15 [DP].

Floor Activity:

Passed House: 3/4/15, 67-29.

Floor Activity:

Passed House: 2/15/16, 64-33.

Brief Summary of Engrossed Bill

- Provides that sexual assault protection orders may be permanent, rather than having a two-year maximum.
- Modifies the procedure for renewal of a sexual assault protection order to require renewal upon the petitioner's motion unless the respondent proves that he or she is not likely to engage in or attempt contact with the petitioner after the order expires.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 10 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Goodman, Hansen, Kirby, Klippert, Muri, Orwall, Stokesbary and Walkinshaw.

Minority Report: Do not pass. Signed by 2 members: Representatives Shea, Assistant Ranking Minority Member; Haler.

Minority Report: Without recommendation. Signed by 1 member: Representative Rodne, Ranking Minority Member.

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.

Staff: Omeara Harrington (786-7136).

Background:

Sexual Assault Protection Orders.

A person may petition for a sexual assault protection order if he or she has been subjected to one or more incidents of nonconsensual sexual conduct or penetration that gives rise to a reasonable fear of future dangerous acts. These orders provide a remedy for victims of sexual assault who do not qualify for a domestic violence protection order. A sexual assault protection order may restrain the respondent from having any contact with the victim, prohibit the respondent from certain places, and contain other relief as the court deems necessary for protection of the victim.

Duration and Renewal.

Upon petition, the court may issue an ex parte temporary protection order pending the hearing. The temporary order is effective for a fixed period not to exceed 14 days from the issuance of the temporary order. Final sexual assault protection orders are valid for a fixed time not to exceed two years.

Any sexual assault protection order, whether it is final or temporary, may be renewed one or more times. If the request for renewal is uncontested and no modification is sought, the order may be renewed on the basis of a motion or affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason a renewal is being requested. If a motion for renewal is contested, the court must order a hearing for no more than 14 days from receipt of the motion, or 24 days if the court has allowed service by publication or mail.

Summary of Engrossed Bill:

A final sexual assault protection order may be for a fixed period of time or be permanent.

The court must grant a petitioner's motion for renewal unless the respondent proves by a preponderance of the evidence that there has been a material change in circumstances such that the respondent is not likely to engage in or attempt physical or nonphysical contact with the petitioner after the order expires.

In considering whether there has been a material change in circumstances, the court must consider only factors that address whether the respondent is likely to attempt contact with the petitioner when the order expires. The passage of time and compliance with the existing order are not, alone, sufficient to meet the burden of proof. A list of factors is provided for use in determining whether or not there has been a material change in circumstances, including, but not limited to, whether or not the respondent:

- has committed or threatened sexual assault, domestic violence, stalking, or other violent acts since the order was entered;
- has violated the terms of the order, and how much time has passed since the entry of the order;
- has exhibited suicidal ideation or attempts since the order was entered;
- has been convicted of criminal activity since the order was entered;

- has acknowledged responsibility for the acts of sexual assault underling the order or has successfully completed sexual assault perpetrator treatment or counseling since the order was entered;
- has a continuing involvement with drug or alcohol abuse, if such abuse was a factor in the protection order; or
- has relocated to an area more distant from the other party.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) It is an absolute necessity to address modification and duration of sexual assault protection orders. These changes mirror other protection orders, and make them more consistent. It is hard to obtain a sexual assault protection order in the first place, and orders are often only entered for a short duration, in some cases only three or six months. Under current law, two years is the maximum, regardless of what the circumstances are. Two years is too short in many cases. An example would be a petitioner and respondent who are high school classmates and the order will expire while they are still there. A permanent order will not be entered in every case. The court should be able to set the appropriate amount of time given the circumstances, including the relationship with the victim, the level of violence or trauma, the recovery process, and the vulnerability of the victim. Judges have said that they wish they could enter a longer order, but their hands are tied. It is difficult to get through the court process for renewal and renewals are often denied. Victims are having to reprove the entire case. The fact that there has been no contact sometimes is interpreted as the order not being needed, when it may just mean that the order is working. The explicit language on renewal and extending the period of the order will be encouraging to a victim seeking an order.

(Opposed) This bill does not extend the time limit for an order, it essentially removes any renewal of this order from consideration by a court in perpetuity. The piece missing from this conversation is that a sexual assault protection order imposes criminal liability on persons who in most cases have not committed a crime. An order imposes restrictions on liberty. There are problems with the burden of proof imposed in the bill, which unfairly requires a person to defend his or her civil liberties. It is almost impossible to prove that a person does not have ill intent. If there is a preponderance of the evidence that an order is necessary, an order should be put in place; if not, the order should not be in place.

Persons Testifying: (In support) Representative Goodman, prime sponsor; Andrea Piper Wentland, Washington Coalition of Sexual Assault Programs; Laura Jones, King County Sexual Assault Resource Center; and Riddhi Mukhopadhyay, Sexual Violence Legal Services.

(Opposed) Catherine Elliott, Washington Association of Criminal Defense Lawyers and Washington Defense Attorneys.

Persons Signed In To Testify But Not Testifying: None.