

# SENATE BILL REPORT

## HB 2033

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As of March 26, 2015

**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:** Passed House: 3/04/15, 67-29.

**Committee Activity:** Law & Justice: 3/19/15.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Melissa Burke-Cain (786-7755)

**Background:** Sexual assault protection orders provide a civil court remedy for persons who are victims of nonconsensual sexual conduct or sexual penetration, and fear repeated harm from the attacker. A court may issue a 14-day temporary protection order requiring an attacker to stay away from the victim. The temporary protection order may be granted based only on the victim's sworn statement. With notice, a court may issue a final sexual assault protection order effective for up to two years. The protection orders can be extended for additional time if needed.

The protection order is available when a victim does not qualify for a domestic violence protection order. An order may be issued on behalf of a minor, a vulnerable adult defined by law, or any other adult who is not able to ask the court for an order because of age, disability, health, or access. An attacker faces charges for violating a sexual assault protection order.

**Summary of Bill:** After notice, a final sexual assault protection order may require the offender to stay away from the victim for a specific period of time, or stay away permanently, unless a law provides otherwise. The court may renew a temporary or non-permanent protection order, or make the protection order permanent, if there is a timely request. The court must grant a renewed order unless the offender proves, on a more likely than not basis, that they will not repeat, or try to repeat, the harm. By itself, obeying the order over time is not enough proof for a court to deny renewing the protection order.

**Appropriation:** None.

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*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.*

**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 is needed because there are persons who are sexually assaulted and need an order to prevent contact with their offender but they do not qualify for a domestic violence protection order. The bill aligns with laws authorizing domestic violence protection orders and stalking protection orders. Some judges are reluctant to extend a sexual assault protection order. From a King County perspective, after monitoring approximately 400 cases, fewer than 50 percent of sexual assault protection orders are granted initially. There has been an notable trend of denying a reissue or extension of the protection, again based on King County data. A court should be able to exercise discretion and extend an order or make it permanent based on the evidence. An example of a scenario supporting extending an order for more than two years would be if a high school student is sexually assaulted in the ninth grade but must continue in school with the offender until graduation four years later. The two-year maximum for sexual assault protection orders requires a victim to go back to court, and relive the experience of sexual assault, to obtain a continued protection order.

A violation of a sexual assault protection order does not automatically result in criminal charges. The respondent must know about the protection order, be served with the order, and make a knowing violation of the order. There is no constitutional problem with this bill. It does not violate due process, equal protection, or freedom of travel. The bill is a civil remedy that does not depend on a decision to prosecute the sexual assault. A background check will only show the sexual assault protection order if there is an arrest and pending criminal charges. A sexual assault protection order does not show up on a Washington State Patrol background check and public access, such as a prospective employer, is limited to conviction records. For firearms, there is no automatic requirement to surrender firearms when a protection order is granted. A separate hearing is held to determine whether the respondent displayed a weapon or used a weapon to threaten the victim or whether there is some other reason that the respondent cannot possess a firearm. The burden of proof for an order to surrender a firearm is clear and convincing evidence. The sexual assault protection order is a civil order and specific to Washington State so it should not show up in any national databases like the Federal Bureau of Investigation or at border crossings. If there is a criminal conviction for sexual assault or for a violation of the protection order, reentry into the U.S. can be denied.

CON: This bill amounts to a fundamental due process violation because it shifts the burden of proof from the petitioner to the respondent to prove that the protective order should not be extended. Under the bill, respondent's compliance with an existing order, or the fact that the behavior has not been repeated, or the length of time the order has been in effect without violation is deemed irrelevant in the decision to extend, or not extend, the order. In effect, the respondent cannot rely on past non-contact or behavior to show the likelihood of continued no contact or good behavior, even if a lengthy period has passed since the initial incident. Yet, if the respondent does not convince the court by a preponderance of evidence, the court must extend the protection order or make it permanent if that is the petitioner's

request. If the respondent knows of the order, has been served with the order, and knowingly contacts or attempts to contact the victim in violation of the order, the respondent can be charged with a misdemeanor for three initial violations and thereafter charged with a felony.

**Persons Testifying:** PRO: Representative Goodman, prime sponsor; Andrea Piper-Wentland, WA Coalition of Sexual Assault Programs; Laura Jones, Courtwatch manager, King County Sexual Assault Resource Center; Riddhi Mukhopadhyay, YWCA Sexual Violence Legal Services.

CON: Bob Cooper, WA Assn. of Criminal Defense Lawyers, WA Defender Assn.

**Persons Signed in to Testify But Not Testifying:** No one.