

HOUSE BILL REPORT

ESSB 5256

As Passed House:
April 6, 2017

Title: An act relating to sexual assault protection orders.

Brief Description: Concerning sexual assault protection orders.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Fain, Pedersen, Zeiger, Palumbo, Miloscia, Frockt, Darneille, Chase, Kuderer and Hunt).

Brief History:

Committee Activity:

Judiciary: 3/21/17, 3/23/17 [DP].

Floor Activity:

Passed House: 4/6/17, 75-22.

Brief Summary of Engrossed Substitute 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 unless the respondent shows that he or she will not engage in or attempt contact with the petitioner after the order expires.
- Establishes procedures for a respondent to petition to terminate or modify the terms of a sexual assault protection order, including terms related to firearms, dangerous weapons, or concealed pistol licenses.
- Provides that the crime of Unlawful Possession of a Firearm based on being subject to a court order involving an intimate partner that meets certain criteria does not apply to a person restrained under a sexual assault protection order that has been modified to remove firearms restrictions.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 11 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Muri, Assistant Ranking Minority Member; Frame, Goodman, Graves, Hansen, Kirby, Klippert and Orwall.

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.

Minority Report: Do not pass. Signed by 2 members: Representatives Haler and Shea.

Staff: Edie Adams (786-7180).

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 by the respondent. Sexual assault protection orders are available 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.

Upon petition for a sexual assault protection order, the court may issue an ex parte temporary protection order pending the hearing if the court finds that the harm which the order is intended to prevent would likely occur if the respondent were given any prior notice. 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 temporary or final sexual assault protection order may be renewed one or more times. If the request for renewal is uncontested and the petitioner is not seeking a modification, 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 to be held no more than 14 days from receipt of the motion, or 24 days if the court has allowed service by publication or mail.

A court may modify the terms of a sexual assault protection order for another fixed time period after notice to the respondent and a hearing held no later than 14 days after the motion. If an order is terminated or modified before its expiration date, the clerk of the court must forward a copy of the modified order or the termination of the order to the appropriate law enforcement agency for entry in, or removal from, the computer-based criminal intelligence information system.

Restrictions on Firearms Possession.

A person who is subject to a protection order, restraining order, or no-contact order that restricts a person's ability to have contact with another may be required to surrender his or her firearms, dangerous weapons, and concealed pistol license while the order is in place. Circumstances under which a court may order the surrender include if the person has used, displayed, or threatened to use a firearm or dangerous weapon in a felony or has previously committed an offense making the person ineligible to possess a firearm.

The court must order the surrender of firearms during any period of time the person is subject to certain qualifying court orders involving intimate partners. In addition, the crime of Unlawful Possession of a Firearm applies when a person possesses a firearm during any

period of time that the person is subject to a qualifying court order involving an intimate partner. A qualifying order is one that is issued after notice and an opportunity to be heard and that meets certain other criteria, including that the order finds that the restrained person is a credible threat to the physical safety of an intimate partner or the child of an intimate partner or the person, and by its terms restrains the person from using or threatening physical force against an intimate partner or child.

Summary of Bill:

Provisions governing the allowed term of a sexual assault protection order and standards for renewal, modification, or termination of a sexual assault protection order are revised.

Term of an Order.

The two-year maximum term for a final sexual assault protection order is eliminated. A final order may be for a fixed period of time or be permanent.

Renewal of an Order.

A motion to renew an ex parte temporary or nonpermanent final sexual assault protection order must state the reasons for seeking renewal. The court must grant a motion for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not engage in, or attempt contact with, the petitioner after the order expires. The passage of time and compliance with the existing order are not, alone, sufficient to meet the burden of proof.

In determining whether there has been a material change in circumstances, the court may consider only factors that address whether the respondent is likely to engage in, or attempt contact with, the petitioner when the order expires, including 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 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 underlying 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.

Modification or Termination of an Order.

The procedures for modification or termination of a sexual assault protection order are revised, and standards are established for a respondent to petition for termination or modification, including for modification of terms relating to firearms, other dangerous weapons, or concealed pistol licenses. The respondent must include a declaration setting forth facts supporting the requested order for termination or modification, and the nonmoving parties may file opposing declarations. The court may set the motion for hearing only if the court finds adequate cause for a hearing based on the declarations.

After a hearing, the court may terminate or modify the order if 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 contact with, the protected person if the order is terminated or modified. A respondent may petition for termination or modification once in every 12-month period. A court may require the respondent to pay the petitioner for costs incurred in responding to a motion to terminate or modify, including reasonable attorneys' fees.

Unlawful Possession of a Firearm.

The crime of Unlawful Possession of a Firearm based on being subject to a qualifying court order involving an intimate partner does not apply to a person restrained under a sexual assault protection order that has been modified to remove any restrictions on the purchase, transfer, or possession of a firearm.

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) This bill remedies an inequity in our protection order laws by removing the two-year cap on sexual assault protection orders. Sexual assault victims are the only victims who have to appear every two years to have an order renewed. Victims of sexual assault are often traumatized and may fear to come forward. When a victim knows the abuser is nearby, it creates a real fear of potential harm. The two-year time period passes very quickly. A victim should not have to face an abuser every two years for the rest of the victim's life. It is important to have adequate protection in the laws so that victims feel safe to come forward and seek protection.

The bill aligns the law with those applicable to other protection orders, including domestic violence and stalking protection orders. It gives the court discretion to enter a permanent order where appropriate. Courts give serious consideration to whether or not a permanent order should be entered. For domestic violence orders, this usually happens only when there has been a conviction or multiple incidents. The bill also creates standards for modifying an order and makes the burden of proof similar to that required under other protection order statutes. These changes will improve access to justice for sexual assault victims.

(Opposed) The bill is trying to mirror the domestic violence statute, but there are big differences between the process for these two orders, and that is why the statutes are different. Sexual assault protection orders are issued after a bench trial, whereas domestic violence protection orders are issued based on affidavits submitted by the parties. Many sexual assault protection order petitions are not granted because the petitioner cannot meet the burden, so it does not make sense to shift the burden to the respondent. Allowing a permanent order to be entered is too burdensome. It would be more appropriate to allow an

order for a five-year period. The renewal process does not require a retrial of the issues because the facts are already known to the court.

Persons Testifying: (In support) Rebecca Johnson, Washington Coalition of Sexual Assault Programs; David Ward, Legal Voice; Laura Jones, King County Sexual Assault Resource Center; Calissa Knox; and Riddhi Mukhopadhyay, YWCA Sexual Violence Legal Services.

(Opposed) Laura Shaver, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

Persons Signed In To Testify But Not Testifying: None.