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SENATE BILL 5256

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State of Washington                      65th Legislature                      2017 Regular Session

By Senators Fain, Pedersen, Zeiger, Palumbo, Miloscia, Frockt, Darneille, Chase, Kuderer, and Hunt

Read first time 01/18/17. Referred to Committee on Law & Justice.

1            AN ACT Relating to sexual assault protection orders; and amending  
2            RCW 7.90.120 and 7.90.121.

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

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

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

19           (b) Any ex parte temporary order issued under this section shall  
20           contain the date and time of issuance and the expiration date and

1 shall be entered into a statewide judicial information system by the  
2 clerk of the court within one judicial day after issuance.

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

6 (3) Any sexual assault protection order which would expire on a  
7 court holiday shall instead expire at the close of the next court  
8 business day.

9 (4) The practice of dismissing or suspending a criminal  
10 prosecution in exchange for the issuance of a sexual assault  
11 protection order undermines the purposes of this chapter. This  
12 section shall not be construed as encouraging that practice.

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

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

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

21 (~~(If the motion for renewal is uncontested and the petitioner~~  
22 ~~seeks no modification of the order, the order may be renewed on the~~  
23 ~~basis of the petitioner's motion or affidavit stating that there has~~  
24 ~~been no material change in relevant circumstances since entry of the~~  
25 ~~order and stating the reason for the requested renewal.))~~ (a) The  
26 court shall grant the motion for renewal unless the respondent proves  
27 by a preponderance of the evidence that there has been a material  
28 change in circumstances such that the respondent is not likely to  
29 engage in or attempt to engage in physical or nonphysical contact  
30 with the petitioner when the order expires.

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

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

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

8 (ii) Whether the respondent has violated the terms of the  
9 protection order and the time that has passed since the entry of the  
10 order;

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

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

15 (v) Whether the respondent has either acknowledged responsibility  
16 for acts of sexual assault that resulted in entry of the protection  
17 order or successfully completed sexual assault perpetrator treatment  
18 or counseling since the protection order was entered;

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

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

26 (viii) Other factors relating to a material change in  
27 circumstances.

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

31 (b) The court may schedule a hearing by telephone pursuant to  
32 local court rule, to reasonably accommodate a disability, or in  
33 exceptional circumstances to protect a petitioner from further  
34 nonconsensual sexual conduct or nonconsensual sexual penetration. The  
35 court shall require assurances of the petitioner's identity before  
36 conducting a telephonic hearing.

37 (c) The respondent shall be personally served not less than five  
38 court days prior to the hearing. If timely personal service cannot be  
39 made, the court shall set a new hearing date and shall either require  
40 additional attempts at obtaining personal service or permit service

1 by publication as provided in RCW 7.90.052 or service by mail as  
2 provided in RCW 7.90.053. The court shall not require more than two  
3 attempts at obtaining personal service and shall permit service by  
4 publication or service by mail unless the petitioner requests  
5 additional time to attempt personal service. If the court permits  
6 service by publication or service by mail, the court shall set the  
7 hearing date not later than twenty-four days from the date of the  
8 order.

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

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