

HOUSE BILL REPORT

HB 1320

As Reported by House Committee On:

Civil Rights & Judiciary
Appropriations

Title: An act relating to modernizing, harmonizing, and improving the efficacy and accessibility of laws concerning civil protection orders.

Brief Description: Modernizing, harmonizing, and improving the efficacy and accessibility of laws concerning civil protection orders.

Sponsors: Representatives Goodman, Thai, Fitzgibbon, Hackney, Wylie, Gregerson, Senn, Ortiz-Self, Davis, Valdez, Lekanoff, Macri, Slatter and Peterson.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/27/21, 2/12/21 [DPS];
Appropriations: 2/19/21, 2/22/21 [DP2S(w/o sub CRJ)].

Brief Summary of Second Substitute Bill

- Consolidates and harmonizes laws governing domestic violence protection orders, sexual assault protection orders, stalking protection orders, anti-harassment protection orders, vulnerable adult protection orders, and extreme risk protection orders under a new chapter governing all protection orders.
- Amends provisions of law addressing the recognition and enforcement of Canadian domestic violence protection orders.
- Revises laws governing orders to surrender and prohibit weapons, revocation of concealed pistol licenses, unlawful possession of firearms, and domestic violence no-contact orders.
- Establishes responsibilities of school districts with respect to students who are subject to protection orders.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

- Repeals existing chapters and provisions governing protection orders and makes conforming and technical changes to numerous provisions of law.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Hansen, Chair; Simmons, Vice Chair; Davis, Entenman, Goodman, Kirby, Orwall, Peterson, Thai, Valdez and Walen.

Minority Report: Do not pass. Signed by 6 members: Representatives Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno, Klippert and Ybarra.

Staff: Edie Adams (786-7180).

Background:

There are a number of civil protection orders that allow a person to petition a court to seek protection from harmful or threatening behavior. Protection orders are available for persons subjected to domestic violence, sexual assault, stalking, harassment, and vulnerable adult abuse. A court, when entering a protection order, may grant broad relief to protect the petitioner, including entering relief to restrain a person from having contact with or threatening another person or to exclude the person from certain locations or coming within a specified distance of certain locations, among many other forms of relief. In addition to protection orders that allow a court to protect a particular individual, there exists an extreme risk protection order (ERPO), which allows a court to prohibit a person from possessing, purchasing, accessing, or receiving a firearm if the person poses a significant risk of harm to self or others by having possession or access to firearms.

With respect to all protection orders, a court may enter an ex parte temporary protection order and, after a full hearing, a final order that lasts for a fixed term, or in some cases is permanent. Generally, a violation of the restraint provisions and certain other provisions of a protection order is a gross misdemeanor offense. A violation of some orders is a class C felony if the person violating the order has two prior convictions for violations of a similar order or if the violation involved an assault or reckless endangerment. A violation of an ERPO is a gross misdemeanor offense for a first or second violation and becomes an unranked class C felony on a third violation.

Each type of protection order is governed by its own chapter setting forth procedures and requirements with respect to the standards and process for filing petitions, court jurisdiction to hear protection order proceedings, conduct of hearings, relief that may be granted, mechanisms for modifying, renewing, or terminating orders, and penalties and enforcement

provisions. There are many similarities in these procedures and requirements across the protection order chapters, but there are also numerous differences.

Surrender of Firearms and Dangerous Weapons.

A person who is subject to a domestic violence, sexual assault, stalking, or anti-harassment protection order may be required to surrender his or her firearms, dangerous weapons, and concealed pistol license (CPL) while the order is in place. In entering most orders, if the person to be restrained has used or threatened to use a firearm in the commission of a felony, or is otherwise disqualified from having a firearm, the court either may or must require the person to surrender their firearms, dangerous weapons, and CPL, depending on the evidence presented. In addition, the court may order surrender where the person's possession of a firearm or dangerous weapon presents a serious and imminent threat to public health or safety, or to the health or safety of any individual. A court is required to order the surrender of firearms, dangerous weapons, and any CPL when entering certain qualifying orders involving intimate partners.

Canadian Domestic Violence Protection Orders.

State law provides for the enforcement of civil domestic violence protection orders (DVPOs) issued by Canadian courts, but only with respect to the parts of the order that prohibit contact with or being within specified locations associated with a protected person or that prohibit harassing or threatening conduct directed at a protected person. If a law enforcement officer determines there is probable cause to believe a valid Canadian DVPO exists and has been violated, the officer must enforce the terms of the order in the same manner as a DVPO issued in Washington. A copy of the order constitutes probable cause to believe that a valid order exists.

A person with a valid Canadian DVPO may file the order with Washington courts. Provisions for registration of orders are also provided, although there is no current registry of protection orders in Washington. Upon application of a petitioner or respondent, a court may enforce or refuse to enforce an order following procedures for enforcement of a Washington DVPO.

Summary of Substitute Bill:

A new chapter of law is established to govern DVPOs, sexual assault protection orders (SAPOs), Stalking protection orders (Stalking POs), anti-harassment protection orders (AHPOs), vulnerable adult protection orders (VAPOs), and ERPOs. The following chapters and provisions of law currently governing protection orders are repealed: RCW chapters 7.90, 7.92, 7.94, 10.14, 26.50, RCW 74.34.115 through 74.34.163 and 74.34.200, and RCW 26.10.115.

The new chapter consolidates and harmonizes protection order laws and generally provides uniformity in rules and procedures for all protection orders. Differences in provisions are

retained in some circumstances and new provisions governing protection orders are established. The new chapter is organized into parts addressing the following issues: intent and definitions; jurisdiction and venue; filing; service; hearings; order duration, relief, and remedies; reissuance and renewal; violations and enforcement; modification and termination; and miscellaneous provisions.

An overview of some of the main provisions and changes from existing provisions governing protection orders are summarized below.

Definitions.

Relevant definitions for all protection orders are consolidated into one new section, and revisions are made to the definitions of some terms, including:

- With respect to vulnerable adults, the definitions of "abuse," "mental abuse," "physical abuse," and "sexual abuse" are modified to include intentional and reckless acts, in addition to willful acts.
- The definition of "domestic violence" is modified to remove the requirement that infliction of fear of harm be imminent, and to include "unlawful harassment" and "coercive control." "Coercive control" is defined to mean a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty and is used to cause another to suffer physical or psychological harm.
- The definition of "family or household member" is expanded to apply to all persons (not just adults) related by blood or marriage or who currently or formerly resided together, and to include a parent's intimate partner and children and a person who is or has acted as a legal guardian.
- The definition of "intimate partner" is revised to encompass persons who have or have had a dating relationship where both persons are at least 13 years of age or older.
- The definition of "unlawful harassment" is revised to include a single act of violence or threat of violence directed at a specific person that seriously alarms, annoys, harasses, or is detrimental to such person, and that serves no legitimate or lawful purpose, which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner. A single threat of violence must include: (i) a malicious and intentional threat as described in the hate crimes statute; or (ii) the presence of a firearm or other weapon.

New definitions are also provided for the following terms: "consent," "firearm," "full hearing," "full protection order," "possession," and "temporary protection order."

Jurisdiction and Venue.

The current differing approaches concerning subject matter jurisdiction of superior courts and courts of limited jurisdiction to hear protection order proceedings are retained. The Administrative Office of the Courts (AOC), through the Supreme Court's Gender and Justice Commission, must consider and make recommendations by June 30, 2022, on the differing approaches to jurisdiction across protection orders and whether jurisdiction should

be harmonized, modified, or consolidated.

The venue for all protection order proceedings is in the county or municipality where the petitioner resides. A petitioner may also file in the county or municipality where an act giving rise to the petition occurred, a child to be protected by the order primarily resides, or the petitioner resided prior to any relocation that was due to the respondent's conduct, or in the court nearest to the petitioner's residence or former residence prior to a relocation based on the respondent's conduct.

Provisions governing jurisdiction over nonresidents apply to all protection order proceedings.

Filing.

The six different types of protection orders are retained and provisions setting forth who may petition for the order and when a person may file a petition on behalf of another person, such as a minor or vulnerable adult, are specified. Minors who are 15 years of age or older may petition for any type of protection order for themselves.

A petitioner who is sexually assaulted, stalked, or unlawfully harassed by an intimate partner or family or household member should, but is not required to, seek a DVPO. A petition for any type of protection order must not be dismissed or denied on the basis that the alleged conduct meets criteria for issuance of a different type of protection order. If a petitioner files in the wrong court, the court must enter findings establishing the correct court and have the petition transferred to the correct court.

Procedures for filing petitions are specified and new provisions governing electronic filing of petitions are established. Courts must permit petitions and all other filings in connection with a petition to be filed either: in person; remotely through an online filing system; or by mail for persons who are incarcerated or unable to file in person or through an electronic filing system.

Electronic filings may be made at any time of the day. The electronic filing system should allow for enrollment of the petitioner to electronically track and receive notifications regarding the progress of the petition, and for the respondent to enroll for similar notifications. Parties, attorneys, and witnesses may electronically sign sworn statements in all filings.

A petition must be accompanied by a confidential document to be used by the court and law enforcement to fully identify the parties and that is exempt from public disclosure. Minor children must be referred to in the petition and other publicly available filed documents by their initials and date of birth. Orders issued by the court for entry into a law enforcement database must show the minor's full name for identification purposes, but be redacted to only display initials for purposes of public access.

Consistency across protection orders is established with respect to a number of issues, including:

- A petition may be filed whether or not there is another action between the parties, and a person's right to petition is not affected by the person leaving a residence or household.
- A petitioner's address may be omitted from filed documents if disclosure would risk harm to the petitioner or petitioner's family or household.
- A guardian ad litem may be appointed for a petitioner or a respondent who is under age 18.
- Relief may not be denied or delayed on the grounds that the relief is available in another action.

New duties are established for the AOC, including requirements to:

- develop and distribute a single petition form that may be used to file for any type of protection order, except an ERPO, by June 30, 2022;
- create a new confidential party information form that will serve both the court's and law enforcement's data entry needs, and ensure petitioner's confidential information is protected;
- prepare instructions, brochures, forms, and a handbook on the protection order process in consultation with civil legal aid, culturally specific advocacy programs, and domestic violence and sexual assault advocacy programs, and make instructions and informational brochures available online to view and download at no cost; and
- develop standards, through the Supreme Court's Gender and Justice Commission, for filing evidence in a way that protects victim safety and privacy and standards for private vendors who provide services related to filing systems.

Court clerks must obtain community resource lists addressing specified programs and resources which must be made available as part of or in addition to informational brochures. Court clerks must not make an assessment of the merits of a petition or refuse to accept for filing any petition that meets procedural requirements.

Service.

Provisions governing service requirements for protection order proceedings and protection orders are consolidated and harmonized for all protection orders and new provisions allowing for electronic service in most cases are established.

Personal service by law enforcement is required for: ERPOs and protection orders with orders to surrender and prohibit weapons (OTSWs); cases that involve transferring custody of a child from the respondent to the petitioner; or cases involving vacating the respondent from a shared residence. Personal service by law enforcement should be used where the respondent is incarcerated. Otherwise, personal service may be by law enforcement unless the petitioner elects service by a third party.

Service by electronic means must be prioritized for all order types at the time of issuance of

temporary protection orders, except where personal service is required. Service by electronic means must be effected by law enforcement unless the petitioner elects service by a third party. Electronic service may be through electronic mail (e-mail), text message, social media applications, or other technologies. Requirements are established for transmitting electronic service, verifying receipt and providing sworn proof of service, and documenting when electronic service is complete.

Service by mail is permitted only when electronic service is not possible and there have been two unsuccessful attempts at personal service, or where the petitioner requests it in lieu of electronic service where personal service is not required. Service by publication is permitted only where all other means of service have been unsuccessful or are not possible.

Courts may authorize multiple methods of service and must favor speedy and cost-effective methods of service. Courts must not dismiss a petition or motion, over the objection of the petitioner, based on inability to serve the respondent unless all available methods of service have been unsuccessfully attempted.

Consistent rules are established governing: service on a respondent who is under the age of 18 or an individual subject to a guardianship or conservatorship; requirements for when and how service by law enforcement must be completed and documented; materials that must be included with service; and time requirements for service.

Courts and law enforcement agencies must adopt rules, protocols, and pattern forms to standardize and implement best practices for service and efficient transmission of court documents to law enforcement for entry into criminal justice databases and returns of service or property.

Hearings.

More detailed and consistent provisions are established governing how protection order hearings are conducted. Protection order proceedings are special proceedings and statutory provisions governing hearings supersede inconsistent civil court rules.

Courts must prioritize hearings on ex parte temporary protection orders over less emergent proceedings. Courts must also prioritize ERPO hearings where a law enforcement agency is the petitioner and may allow a law enforcement petitioner to participate telephonically or allow another representative to present information to the court if the officer is not required for testimonial purposes.

A hearing on a petition must be set even if the court has denied a request for a temporary protection order and where the petition is not dismissed or continued. Rules are provided governing requests to stay, continue, or delay a hearing due to the pendency of a parallel criminal investigation or prosecution of the respondent.

Hearings must be conducted upon live testimony of the parties and sworn declarations.

Live testimony of witnesses may be requested but must not be permitted unless the court finds testimony of other witnesses is necessary and material. Prehearing discovery is disfavored and only permitted if specifically authorized by the court for good cause upon written motion of a party filed six days prior to the hearing. The rules of evidence need not be applied other than with respect to privileges, requirements of the rape shield statute, and evidence rules governing evidence of a sexual assault victim's past behavior and the immigration status of a party or witness.

If the court finds prior to a full hearing that a petition does not contain sufficient allegations, the court must give the petitioner 14 days to file an amended petition if the court finds that amendment would not be futile. If an amended petition is not filed, the petition must be administratively dismissed by the clerk's office. Courts must not require parties to submit duplicate copies of filed documents, unless the documents are illegible or cannot be scanned. If possible, courts must have petitioners and respondents gather in separate locations and enter and depart the court room at staggered times.

Protection order hearings may be conducted in person or remotely, including by telephone, video, or other electronic means where possible. The parties may request to appear remotely by telephone, video, or other electronic means no later than three judicial days before the hearing, and the court must grant the request unless the court finds good cause to require in-person attendance or attendance by a specific means. Procedures and requirements for conducting remote hearings are provided, including requirements for resetting a hearing where a party is unable to appear remotely due to technological issues. A party attending a hearing remotely who is unable to participate outside the presence of others who reside with the party, including children, and who asserts that presence of the individuals may hinder the party's testimony or ability to fully participate in the hearing, may request and must be granted one continuance on that basis.

Specific grounds on which it is improper for a court to deny or dismiss a petition are provided. If a court declines to issue a protection order, the court must state in writing the particular reasons for the denial and explain from the bench: that the petitioner may refile a petition at any time based on new evidence; the parties' right to seek revision, reconsideration, or appeal; and the parties' rights of access to the court transcript and recordings of the hearing.

Standards are established for compliance hearings. Only the respondent is required to appear at a compliance hearing, but the petitioner may appear and provide evidence to the court or file a responsive declaration. Any order entered pursuant to a compliance hearing must be served on the respondent and the court must use best efforts to notify the petitioner of the outcome of the hearing.

The court may appoint counsel to represent a petitioner if the respondent is represented by counsel. Protection order advocates and support persons are allowed to accompany the petitioner to the proceedings. Standards for the appointment of interpreters are provided,

and include requirements that a court may not appoint an interpreter who is not trained and may not appoint a person to interpret who is serving as an advocate for the party.

The AOC, through the Supreme Court's Gender and Justice Commission, must consider and make recommendations on: use of technology to reduce administrative burdens in protection order proceedings; improving access to unrepresented parties; best practices where there are civil protection order proceedings and criminal proceedings concerning the same alleged conduct; and best practices in data collection and sharing. Recommendations must be reported to the Legislature by June 30, 2022.

Duration, Relief, and Remedies.

The standard for issuance of an ex parte temporary protection order for all protection orders other than ERPOs requires a showing that irreparable injury could result if an order is not issued immediately without prior notice to the respondent. If the court declines to issue an ex parte temporary protection order, the court must state the particular reasons for the denial and must still set a full hearing on the petition.

All forms of relief currently available under all protection order statutes, other than ERPOs, are consolidated into one section that applies with respect to all protection orders other than ERPOs, including ex parte temporary protection orders. Additional forms of relief are also provided, including allowing a court to:

- prohibit a respondent from knowingly coming within, or knowingly remaining within, a specified distance of the protected party's person or vehicle; distance restrictions in protection orders must presumptively be 1,000 feet unless the court finds good cause for a shorter distance;
- restrict the respondent from engaging in abusive litigation or frivolous filings, making harassing or libelous communications about the petitioner to third parties, or making false reports to investigative agencies;
- order financial relief and restrain transfer of jointly owned assets; and
- restrain the respondent from possessing or distributing intimate images depicting the petitioner.

Other provisions provide standards for addressing relief regarding a residential schedule for the children and mental health evaluations, and prohibit electronic monitoring of respondents who are minors. The court is prohibited from taking certain actions, including ordering the petitioner to obtain services or pay for the respondent's attorneys' fees or costs.

Minors are presumed to be unable to pay for the costs of mental health or chemical dependency evaluations, as well as court costs, service fees, and reimbursement for petitioner's costs and attorneys' fees. The minor's parent or legal guardian is responsible for these costs unless unable to pay. If a minor respondent is prohibited attendance at the minor's assigned school, the school district must provide comparable educational services in another setting and put in place needed supports, and provide transportation at no cost if the respondent's parent or guardian is unable to pay.

Full protection orders, other than ERPOS, may be for a fixed period of time or permanent, except in cases restraining the respondent from contact with the respondent's children. The court must not grant relief for less than one year unless specifically requested. The court may order law enforcement to assist the petitioner in collecting possessions and execution of the order. Consistent provisions governing entry of protection orders into the Judicial Information System (JIS) and criminal justice databases are provided.

Additional new provisions include: allowing ERPO records to be sealed where the order was based solely on threats of self-harm of the respondent; requiring certain findings before issuing agreed orders; requiring automatic reissuance of an OTSW when reissuing a temporary protection order that included a temporary OTSW; and allowing courts to correct clerical or technical errors in protection orders.

The JIS Data Dissemination Committee must develop recommendations on best practices for courts to consider regarding whether and when sealing of records in protection order cases is appropriate or necessary and methods to prohibit Internet publication of filing or registration information of protection orders when publication is likely to reveal the identity or location of the protected person.

Reissuance and Renewal.

More detailed standards for the reissuance and renewal of protection orders are consolidated and harmonized for all protection orders, other than ERPOs.

A temporary protection order may be reissued upon agreement of the parties, to provide additional time for service of the temporary order, or for good cause. Temporary OSTWs must be automatically reissued with the temporary protection order. There is a rebuttable presumption that a temporary order should not be reissued more than once for more than 30 days at the request of the respondent absent agreement, good cause, or need for additional time for service. Courts must not require the petitioner to complete a new law enforcement information sheet when an order is reissued or a full order is entered unless information needs to be updated. The clerk must transmit the new order to law enforcement, along with a copy of the respondent's confidential party information form, if available, or the petitioner's confidential party information form, to assist law enforcement in serving the order.

A court must grant a motion for renewal of a protection order unless the respondent proves that there has been a substantial change in circumstances and that certain conditions relevant to each type of protection order are met. The plaintiff bears no burden of proving a current reasonable fear of harm by the respondent. A list of non-weighted factors is provided for the court to consider in determining whether there has been a substantial change of circumstances. A court may not deny a motion to renew based on certain specifically listed circumstances, including that: the respondent has not violated the order; the petitioner or respondent is a minor; or the respondent no longer lives near the petitioner.

The terms of the original protection order must not be changed except upon request of the petitioner. The renewed protection order may be for a fixed period of time of no less than one year or may be permanent. If the protection order includes the parties' children, a renewed protection order may be issued for more than one year, subject to subsequent orders in a family law proceeding. The court may award costs, service fees, and reasonable attorneys' fees to the petitioner.

Violations and Enforcement.

Provisions governing violations of DVPOs, SAPOs, Stalking POs, and VAPOs remain consistent with current law, except to include "knowingly coming within, or knowingly remaining within, a specified distance of a protected party's person or a protected party's vehicle."

Violation provisions governing anti-harassment protection orders are modified. An adult respondent is guilty of a gross misdemeanor only if the respondent willfully disobeys:

- restraint provisions prohibiting acts or threats of violence, unlawful harassment, or stalking of a protected person, or prohibiting contact with a protected party;
- a provision excluding the person from a residence, workplace, school, or day care;
- a provision prohibiting the person from knowingly coming or remaining within a set distance of a location, protected party's person, or protected party's vehicle; or
- a provision prohibiting interfering with the protected party's efforts to remove a pet.

Where personal service of an ERPO is not possible, the respondent must surrender firearms to law enforcement within 24 hours of being served by alternate service.

Modification and Termination.

Consistent and more detailed standards are provided for modification or termination of DVPOs, SAPOs, Stalking POs, and AHPOs. Standards for modification and termination of VAPOs and termination of ERPOs are not changed.

A motion to modify or terminate an order must be determined based on written declarations and evidence submitted to the court. A hearing may be set only if the court finds adequate cause exists. The respondent must prove, by a preponderance of the evidence, that there has been a substantial change in: acts of domestic violence, in cases involving DVPOs; physical or nonphysical contact, in cases involving SAPOs; acts of stalking, in cases involving Stalking POs; and acts of unlawful harassment, in cases involving AHPOs. The plaintiff bears no burden of proving a current reasonable fear of harm by the respondent.

A list of nonweighted factors is provided for the court to consider in determining whether there has been a substantial change of circumstances. The court may not base this determination on the fact that time has passed without a violation of the order. The court may decline to terminate an order if the acts of domestic violence, sexual assault, stalking, unlawful harassment, and other harmful acts that were the basis of the protection order were

of such severity that the order should not be terminated.

A respondent may seek to modify or terminate an order no more than once in every 12-month period that the order is in effect. A court may require the respondent to pay the petitioner for costs and reasonable attorneys' fees incurred in responding to the motion.

A protected person who has a child or adopts a child after the protection order was issued but before the order expires may seek to include the child in the order on an ex parte basis.

The court clerk must forward orders modifying or terminating any protection order to a law enforcement agency, which must promptly enter a modified order into, or remove a terminated order from, the computer-based criminal intelligence information system.

Miscellaneous.

Any order available under the act, other than an ERPO, may be issued in actions under the Family Reconciliation Act, the Uniform Parentage Act, and laws governing dissolution proceedings.

Nothing in the act affects the validity of protection orders issued prior to the effective date of the act under laws being repealed by the act. Prior orders are subject to the act, including provisions governing enforcement, modification, and termination.

Extreme Risk Protection Orders and Orders to Surrender and Prohibit Weapons.

Provisions addressing enforcement and penalties for ERPOs and OTSWs are revised.

A law enforcement agency must revoke a respondent's CPL upon receipt of an ERPO or OTSW. Any agency, not just the license-issuing agency, may revoke the CPL. A law enforcement agency must ensure entry of an OTSW and the revocation of any CPL into the appropriate database making the respondent ineligible to possess firearms and a CPL.

When entering a protection order, a court must (rather than may) issue an OTSW where there is a preponderance of the evidence that specified factors are present. An OTSW may be issued when a court is issuing a vulnerable protection order. The OTSW includes a prohibition on having custody or control, purchasing, receiving, or attempting to purchase or receive a firearm or firearms parts, or a dangerous weapon.

A representative of the prosecutor's office or city attorney's office may appear and be heard at any hearing that concerns compliance with an ERPO or OTSWs, and the court may allow the prosecutor or city attorney to question the respondent regarding compliance.

An ERPO or OTSW must state that the act of voluntarily surrendering firearms or weapons, or providing testimony relating to surrender of firearms or weapons, pursuant to the order, may not be used against the respondent or defendant in any criminal prosecution under the protection order statute, the firearms chapter, or the offense of Possessing a Stolen Firearm.

The Department of Licensing or other appropriate agency must make the following information available to prosecuting attorneys, city attorneys, public defender agencies, probation services personnel, and judicial officers and court staff for the purposes of determining: a person's eligibility to possess firearms; a person's firearms purchase history; and whether a person has or previously had a CPL or has applied for a CPL.

Canadian Domestic Violence Protection Orders.

Laws governing Canadian DVPOs are amended. A new section is established governing the scope and enforceability of a Canadian DVPO. A Canadian DVPO does not need to be filed with the clerk of court or granted recognition and enforcement by a court order prior to enforcement by a law enforcement officer.

Procedures for a court proceeding for recognition and enforcement of a Canadian DVPO are provided consistent with the new protection order chapter. A petitioner may not be charged any fees for filing, service of process, or the provision of documents. Service of process and hearings are to be conducted in accordance with provisions of the new protection order chapter, and interpreters must be appointed as required in the new protection order chapter.

Provisions addressing registration of Canadian DVPOs are removed. A person filing a Canadian DVPO must file a declaration signed under penalty of perjury stating that, to the best of the individual's knowledge, the order is valid and in effect. A copy of a filed Canadian DVPO, or court order addressing recognition and enforcement of a Canadian DVPO, must be forwarded to law enforcement, which must comply with requirements in the new protection order chapter governing entry of the order criminal justice databases.

Other.

A new provision is added to the education code providing that if a student is subject to a civil protection order, the school district and school building staff will make adjustments to the students' schedule and school environment to support compliance with court orders and maintain students' access to education. If the protection order prohibits regular attendance at the student's assigned school, the school district must provide the student comparable educational services and support in another setting without charging tuition or transportation costs. The school district must provide notice to the student's parent or legal guardian of the modification, accommodations, supports, and services being created for the student.

Conforming and technical amendments are made to numerous provisions of the code to update references to provisions repealed by the act. Several sections are amended and recodified into new chapters.

Substitute Bill Compared to Original Bill:

The substitute bill makes numerous changes, including:

- removes the provision making violation of an ERPO Unlawful Possession of a Firearm in the second degree and instead retains current penalty that a violation is a gross misdemeanor for a first offense, and a class C felony for subsequent offenses;
- eliminates language regarding compelled testimony and provides that an ERPO or OTSW must state that voluntarily surrendering weapons or providing testimony regarding surrender may not be used against the respondent in certain criminal prosecutions;
- provides that venue for proceedings may also be in the court nearest to the petitioner's residence or prior residence from which petitioner relocated due to the respondent's conduct;
- requires the AOC to develop a new confidential party information form to serve both the court's and law enforcement's data entry needs and requires this form to be served on the respondent to provide identifying and contact information to the court;
- provides that if a student is subject to a protection order, the school must take steps to support compliance and maintain the student's access to education, and if the order prohibits attendance at the student's assigned school, the school district must provide the student comparable educational services in another setting;
- revises study provisions to designate the Supreme Court's Gender and Justice Commission as the lead entity and to extend the time for completing the studies;
- requires orders that will be entered into a law enforcement database to show a minor's full name for identification purposes, but be redacted to display initials and date of birth for public access;
- removes the provision requiring the Department of Children, Youth, and Families, upon request, to file a protection order petition on behalf of a parent involved in a dependency proceeding;
- revises provisions governing hearings to: require a hearing on a petition even if a temporary order is denied; more specifically state that live testimony of witnesses is not allowed unless necessary and material; and revises language regarding resetting a hearing if the respondent does not appear and allowing the filing of an amended petition;
- provides that prehearing discovery is disfavored (rather than not permitted), and removes a provision governing requests to cross-examine witnesses, pursue discovery, and provide oral testimony by nonparty witnesses;
- revises several provisions governing procedures for remote protection order hearings;
- provides that minors are presumed to be unable to pay for ordered evaluations as well as court costs, fees, and reimbursement for the petitioner's costs and attorneys' fees; and
- makes a number of other changes, including clarifying and technical corrections.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 72, relating to definitions, section 73, relating to vulnerable adult protection order proceedings, and section 74, relating to vulnerable adult protection orders, which take effect January 1, 2022, and section 131, relating to powers of guardians, and section 173, relating to definitions under vulnerable adult protection laws, which due to prior delayed effective dates take effect January 1, 2022.

Staff Summary of Public Testimony:

(In support) This is an important bill to increase access to justice for survivors of domestic violence, sexual assault, harassment, and other harmful behavior. It modernizes and streamlines the process by creating one master petition and consistent rules for all types of protection orders, and using technology to make service and hearing processes more effective and accessible.

Protection orders are the most victim-centered and effective justice response there is for survivors of abuse, but obtaining an order has become an arduous and risky task. Survivors seek protection orders because there is no other avenue for safety given that abusers often do not get a criminal conviction. Protection orders should be a readily available alternative remedy to the criminal justice system.

Often survivors are afraid to come forward due to threats from the abuser that put their livelihood and safety at risk. Abusers continue to try to control survivors after separation, including with nonphysical and physical conduct. The safety of a survivor is at the greatest risk immediately after deciding to leave the relationship. The process of getting a protection order needs to be swift to provide protection in this dangerous period. Allowing petitioners to file for the type of order that meets their needs is an important improvement.

There are many challenges faced in navigating the confusing and bureaucratic system. There are potential barriers at every step in the process and different processes required in courts across the state. This is confusing and discouraging for survivors who need protection, and many end up giving up on the process. Many attorneys have a hard time navigating the system, so imagine how difficult it is for survivors who have no legal knowledge.

Respondents are able to use the complicated process to attack survivors and seek a delay to drag out proceedings. At hearings, survivors must be next to their abusers while testifying about their traumatic experiences. Allowing remote proceedings will help prevent survivors from having to go to court and confront their abusers. It will also make these proceedings more accessible for victims and will decrease the fear, anxiety, and trauma they often face.

The experience during the COVID-19 pandemic with electronic filings and remote hearings has been very successful. These procedures provide greater accessibility for victims, as well as increased efficiency, fewer delays in the process, and a greater ability to reach

respondents. Respondents are engaging better with the remote process by responding to petitions and showing up for hearings.

The ability of law enforcement to serve orders electronically will create efficiencies, but the bill should not require service by an officer. This role is more appropriate for civilian staff. The bill should give some guidance on when electronic service meets personal service requirements. Electronic service of subpoenas should also be authorized.

If protection orders have errors they cannot be served and this puts victims at risk. The bill allows courts to correct errors in orders without requiring the petitioner to come back to court. The Gender and Justice Commission is well-positioned to lead efforts to make recommendations of further improving the protection order process, but needs adequate funding to take on these tasks.

(Opposed) None.

(Other) The goals of this bill are good, but it is a large bill with significant policy implications. More time is needed to work through the impact of the bill to make sure the changes do not create public safety concerns. The provisions allowing for remote hearings and electronic filings are beneficial changes, but there are concerns with the short timeline for implementation and the question of funding for the system and technology improvements that will need to be made. Washington does not have a unified court system and not all counties have the systems needed to implement these requirements.

Court systems need to recognize that young people are different than adults. There are many cases where antiharassment protection orders have resulted in students being excluded from school with no clear path back. The bill needs to provide more protections for youth. Schools, rather than the courts, are in the best position to intervene and address behavioral concerns, meet safety needs, and ensure that kids do not lose access to school.

Persons Testifying: (In support) Representative Goodman, prime sponsor; Marilyn Paja, Washington State Supreme Court's Gender and Justice Commission; David Martin, King County Prosecuting Attorney's Office and Regional Domestic Violence Firearms Enforcement Unit; Angela Rogness, Kim Wyatt, and Colleen McIngalls, King County Prosecuting Attorney's Office; Megan Roake; Matty Nelson, King County Sexual Assault Resource Center; Kristina Hammond, Lutheran Community Services Northwest; Sara Mooney, Sexual Violence Law Center; Colette Sampson and Doris O'Neal, Young Women's Christian Association of King County; Laurie Schacht, Young Women's Christian Association of Clark County; Lorinda Tsai, Divina Agbisit, Theresa Phillips, and Sandra Shanahan, Regional Domestic Violence Firearms Enforcement Unit; Chris Anderson, Seattle City Attorney's Office and Regional Domestic Violence Firearms Enforcement Unit; Tracee Parker, Coalition to End Gender Based Violence; Alexis Espindola, City of Seattle; Judy Lin, King County Bar Association; and Greg Lineberry, Snohomish County Domestic Violence Services.

(Other) James McMahan, Washington Association of Sheriffs and Police Chiefs; Averil Rothrock, Superior Court Judges' Association; Russell Brown, Washington Association of Prosecuting Attorneys; and Karen Pillar, TeamChild.

Persons Signed In To Testify But Not Testifying: Michelle Hunsinger de Enciso, King County Prosecuting Attorney's Office; Bridget Griffin, Young Women's Christian Association of King County; Alex Kory, Northwest Justice; and Dana Cuomo, Lafayette College.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Civil Rights & Judiciary. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Springer, Stonier, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 13 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Dye, Harris, Hoff, Jacobsen, Rude, Schmick and Steele.

Staff: Yvonne Walker (786-7841).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Civil Rights & Judiciary:

A null and void clause was added, making the bill null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 72, relating to definitions, section 73, relating to vulnerable adult protection order proceedings, and section 74, relating to vulnerable adult protection orders, which take effect January 1, 2022, and section 131, relating to powers of guardians, and section 168, relating to definitions under vulnerable adult protection laws, which due to prior delayed effective dates take effect January 1, 2022. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) For many survivors, a civil protection order is their only option for safety. When other systems fail, victims need some assurance that their abuser will stay away. The current protection order system is harmful, wasteful, confusing, and costly. Although there are some concerns relating to implementation and timing of this bill, during this last year of COVID-19, it has been learned that courts can and need to modernize the current system. Funding this bill is an investment in basic safety for survivor needs and this bill is good fiscal policy.

(Opposed) Many judges took part in drafting this bill. This is an incredible reform package however, due to COVID-19, there have been concerns regarding whether counties will have the funding to pay for implementation of this bill. Although this is an important bill, it is suggested that the Legislature instead consider the alternative package that judges have submitted for consideration.

(Other) Protection order statutes need to be modernized and consolidated. There are provisions of this bill that courts of limited jurisdiction can implement immediately, but there are other provisions that courts cannot immediately implement due to lack of funding, as they do not have the same infrastructure as superior courts. It would take five to 10 years in manpower to achieve the upgrades needed for the courts' case management system. Lastly, although protection orders are important, due to the length of the drafted bill, some entities would like more time to review the current draft of the bill.

Persons Testifying: (In support) Riddhi Mukhopadhyay, Sexual Violence Law Center; and Alex Kory, Northwest Justice Project.

(Opposed) Sean O'Donnell, Superior Court Judges' Association.

(Other) James McMahan, Washington Association Sheriffs and Police Chiefs; and Michelle Gehlsen, District and Municipal Court Judges' Association.

Persons Signed In To Testify But Not Testifying: None.