

FINAL BILL REPORT

E2SHB 1320

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Synopsis as Enacted

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

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Goodman, Thai, Fitzgibbon, Hackney, Wylie, Gregerson, Senn, Ortiz-Self, Davis, Valdez, Lekanoff, Macri, Slatter and Peterson).

House Committee on Civil Rights & Judiciary
House Committee on Appropriations
Senate Committee on Law & Justice
Senate Committee on Ways & Means

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 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.

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

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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 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. A court is required to order the surrender of firearms, dangerous weapons, and any CPL when entering certain qualifying orders involving intimate partners. An order to surrender weapons is effective immediately upon service by a law enforcement officer, and the officer must take possession of all firearms, weapons, and any concealed pistol license belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search.

Canadian Domestic Violence Protection Orders.

State law provides for the enforcement of civil domestic violence protection orders (DVPOs) issued by Canadian courts in the same manner for enforcement of a Washington DVPO, but only with respect to provisions 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.

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.

Summary:

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. Existing chapters and provisions of law governing protection orders are repealed.

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. Revisions are made to the definitions of some terms, including: "abuse," "domestic violence," "family or household member," "intimate partner," and "unlawful harassment." New definitions are provided for the following terms: "consent," "firearm," "full hearing," "full protection order," "possession," and "temporary protection order."

Jurisdiction and Venue.

The 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 make recommendations on the differing approaches to jurisdiction across protection orders and whether jurisdiction should be harmonized, modified, or consolidated. Venue for all protection order proceedings is in the county or municipality where the petitioner resides, or in certain other locations.

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.

Procedures for filing petitions are specified and consistency across protection orders is established with respect to numerous issues relating to the petition process. New provisions are established governing electronic filing of petitions. All courts must have systems that 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.

A number of new duties relating to the filing process are established for the AOC and court clerks, including a requirement for the AOC to develop and distribute a single petition form that may be used to file for any type of protection order, except an ERPO.

Service.

Provisions governing service requirements for protection order proceedings and protection orders are consolidated and harmonized for all protection orders, including requirements for when and how service must be completed and documented, materials that must be included with service, and time requirements for service. New provisions allow for electronic service in most cases and standards are provided for when personal service by law enforcement is required. Courts may authorize multiple methods of service and must favor speedy and cost-effective methods of 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 protection order hearings, including: standards for prioritizing and conducting hearings; requirements for filing amended petitions; improper grounds for denying or dismissing a petition; and standards for the appointment of counsel and interpreters. Protection order proceedings are special proceedings and statutory provisions governing hearings supersede inconsistent civil court rules. New provisions allow hearings to be conducted remotely, including by telephone, video, or other electronic means. Procedures for conducting remote hearings are provided, including requirements for resetting a hearing where a party is unable to appear remotely due to technological issues.

The AOC, through the Gender and Justice Commission, must consider and make recommendations to the courts on a number of issues, including: use of technology to reduce administrative burdens; improving access to unrepresented parties; and best practices in data collection and sharing. In addition, recommendations on the following issues must be reported to the Legislature by December 1, 2021: tribal court, military, and other jurisdiction protection orders; best practices for minor respondents and petitioners; and how protection order law can more effectively address coercive control.

Duration, Relief, and Remedies.

Consistent standards governing duration, relief, and remedies are provided for all protection orders other than ERPOs, including: standards for issuance of ex parte and full orders; duration of full orders; requirements where minors are involved; and when sealing of records is allowed. 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.

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. 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 terms of the original protection order must not be changed except upon request of the petitioner. 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.

Violations and Enforcement.

Provisions governing violations of DVPOs, SAPOs, Stalking POs, and VAPOs are revised 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 a provision that: prohibits acts or threats of violence, unlawful harassment, or stalking; excludes the person from certain locations or from knowingly coming or remaining within a set distance of certain locations; or prohibits interfering with the protected party's efforts to remove a pet.

Modification and Termination.

Consistent and more detailed standards are provided for modification or termination of DVPOs, SAPOs, Stalking POs, and AHPOs. The respondent must prove, by a preponderance of the evidence, that there has been a substantial change in circumstances to obtain a modification or termination. 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. 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.

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

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. The Department of Licensing or other appropriate agency must make the following information available to specified criminal justice personnel: 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 to be consistent with the new protection order chapter relating to: procedures for a court proceeding for recognition and enforcement of a Canadian DVPO; service of process and hearings; and appointment of interpreters. 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.

Protection orders issued prior to the effective date of the act are subject to the act, including provisions governing enforcement, modification, and termination. 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.

Votes on Final Passage:

House	53	44	
Senate	27	20	(Senate amended)
House	55	42	(House concurred)

Effective: July 25, 2021 (Sections 12, 16, 18, 25, and 36)
July 1, 2022