

SENATE BILL REPORT

E2SHB 1320

As Reported by Senate Committee On:
Law & Justice, March 25, 2021

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

Brief History: Passed House: 3/1/21, 53-44.

Committee Activity: Law & Justice: 3/16/21, 3/25/21 [DPA-WM, DNP, w/oRec].

Brief Summary of Amended Bill

- Modernizes and harmonizes different civil protection order proceedings.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Darneille, Kuderer and Salomon.

Minority Report: Do not pass.
Signed by Senators Padden, Ranking Member; McCune, Assistant Ranking Member; Holy.

Minority Report: That it be referred without recommendation.
Signed by Senator Wagoner.

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.

Staff: Tim Ford (786-7423)

Background: Any person may petition a court for a protection order from the harmful or threatening behavior of another person. A protection order may 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 other forms of relief. Washington State has the following types of civil protection orders:

- domestic violence protection orders (DVPO);
- vulnerable adult protection orders (VAPO);
- anti-harassment protection orders (AHPO);
- sexual assault protection orders (SAPO);
- stalking protection orders (SPO); and
- extreme risk protection orders (ERPO).

There is no uniform petition or process for the different types of protection orders. While there may be some similarities, each type of protection order is governed by its own laws setting forth court jurisdiction, procedures for filing petitions, hearings, relief that may be granted, the process for modifying, renewing, or terminating orders, and enforcement.

Summary of Amended Bill: A new law is established to consolidate and harmonize protection orders. Existing laws governing protection orders are repealed. The new law provides uniformity in rules and procedures for all protection orders, with few exceptions. The new law is organized into the following parts: 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.

Definitions. 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;
- domestic violence is modified to remove the requirement that infliction of fear of harm be imminent, and to include unlawful harassment and coercive control;
- 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;
- 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;
- 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 a malicious and intentional threat as described in the hate crimes statute, or the presence of a firearm or other weapon; and
- new definitions are provided for the following terms: consent, firearm, full hearing, full protection order, possession, and temporary protection order.

Jurisdiction and Venue. Current court jurisdictions 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 is generally in the county or municipality where the petitioner resides.

Filing and Notice. By January 1, 2023, all superior courts and, by January 1, 2026, all courts of limited jurisdiction, must permit petitions and all other filings in connection with a petition to be filed either in person, remotely through an electronic filing system, or by mail for persons who are incarcerated or unable to file in person or through an electronic filing system. The court systems for electronic filing must allow the petitioner to electronically track and receive notifications for proceedings related to the protection order petition.

Consistency across protection orders is established 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; and
- relief may not be denied or delayed on the grounds the relief is available in another action.

A petition for any type of protection order must not be dismissed or denied on the basis the alleged conduct meets criteria for issuance of a different type of protection order. For publicly available documents, minors subject to proceedings will be only identified by their initials and date of birth.

AOC must develop a single petition form for all types of protection orders except an ERPO, and other forms and informational brochures available online at no cost.

Service. New provisions allow for electronic service in most cases. Electronic service may be through 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. Courts may authorize multiple methods of service and must favor speedy and cost-effective methods of service.

Hearings. Protection order proceedings supersede inconsistent civil court rules. Courts must prioritize hearings on ex parte temporary protection orders and ERPOs over less emergent proceedings. Parties may request to appear remotely by telephone, video, or other electronic means for hearings, and the court must grant the request unless the court finds good cause to require in-person attendance or attendance by a specific means. 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. 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.

Renewal. A court must grant a motion for renewal of a protection order unless the respondent proves there has been a substantial change in circumstances and 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. The renewed protection order may be for a fixed period of time not 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. Violation provisions governing anti-harassment protection orders are modified. An adult respondent is guilty of a gross misdemeanor only if the respondent willfully disobeys the following:

- restraint provisions prohibiting acts or threats of violence, unlawful harassment, or stalking 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.

Modification and Termination. The respondent must prove, by a preponderance of the evidence, 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 SPOs ; 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 when determining 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. 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.

Miscellaneous. 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.

EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S):

- Removes the definition of coercive control and requires the assessment of law to address coercive control.
- Retains jurisdiction with superior courts over actions involving title or possession of real property.
- Clarifies that required filings are with county clerks on behalf of courts.
- Clarifies that no fees will be charged to a petitioner who files for an antiharassment protection order based on stalking, sexual assault, or domestic violence.
- Makes the appointment of a guardian ad litem or counsel dependent on funding.
- Provides descriptive language related to interpreter services.
- Requires recommendations for greater coordination with tribal courts.
- Requires recommendations for jurisdiction to include minors, and for protection order proceedings to include best practices for minors.
- Changes dates for when recommendations are due to the legislature.
- Allows the court to grant relief for less than a year in anti-harassment protection orders.
- Provides judicial discretion for the duration of a protection order or modification for respondent minors.
- Removes minor guardianship actions from entry in the Judicial Information System.
- Changes the effective date to July 1, 2022 except for sections 12, 16, and 36.
- Adds a severability clause.

Appropriation: The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on July 1, 2022, except for sections 12, 16, and 36 which take effect ninety days after adjournment of session.

Staff Summary of Public Testimony on Engrossed Second Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill is an improvement in terms of access to justice for victims. Courts were shut down during the pandemic and their ability to issue court orders. The bill allows online access and electronic filing for protective orders. There will be one petition for all types of protection orders, and one statute to streamline the process.

The current process is so discouraging that it is easy to give up trying to get a protective order. Going to court means being next to a person who victimized you. The bill requires mandatory training for judges. Different counties have different rules, processes, and forms which is confusing even for attorneys. It is much harder for non-attorneys to understand. The bill will improve process and accessibility. It provides needed reform for those who are most vulnerable. The definition of domestic violence is amended to address technology abuse which is the primary form of abuse that survivors experience.

OTHER: We support the goals of the bill. However, this bill is over 300 pages long and has been rewritten several times. We have not had time to really review it and make sure that there are no unintended consequences. The term electronic filing should be changed to electronic submission. The appointment of a GAL or counsel needs funding. The deadline for the development of the pattern forms is too ambitious and should be developed on a rolling basis. Anti-harassment orders against youth have resulted from students not being able to attend school. Youth are different than adults. The impact on youth needs to be addressed differently in this bill.

Persons Testifying: PRO: Representative Roger Goodman, Prime Sponsor; Megan Roake, Survivor and Advocate; Michelle Osborne, Antiracism and Gender Violence Consultant/J.D.; Kristina Hammond, Lutheran Community Services Northwest; Marilyn Paja, Co-Chair, Washington State Gender and Justice Commission/Judge; Chief Judge Demmert, Tulalip Tribal Court; Dana Cuomo, Researcher and Professor of Women's Gender and Sexuality Studies/PhD; David Martin, Senior Deputy Prosecutor, Chair, Domestic Violence Unit, King County Prosecuting Attorney's Office; Ailise Delaney, Eastside Legal Assistance Program; Brenda Wiest; Kimberly Smith.

OTHER: James McMahan, Washington Association of Sheriffs and Police Chiefs; Judith Ramseyer, Superior Court Judges' Association/Judge; Heather Wehr, Washington State Coalition Against Domestic Violence; Karen Pillar, TeamChild; Judy Chen, Washington State Coalition Against Domestic Violence.

Persons Signed In To Testify But Not Testifying: No one.