SENATE BILL REPORT
SHB 1901

As of February 21, 2022

Title: An act relating to updating laws concerning civil protection orders to further enhance and improve their efficacy and accessibility.

Brief Description: Updating laws concerning civil protection orders to further enhance and improve their efficacy and accessibility.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Goodman, Davis, Taylor and Kloba).

Brief History: Passed House: 2/8/22, 71-25.
Committee Activity: Law & Justice: 2/22/22.

Brief Summary of Bill

- Revises provisions governing court jurisdiction over civil protection order proceedings.
- Includes coercive control within the definition of domestic violence and defines the term.
- Revises procedures and standards for filing and service of protection order petitions and orders.
- Makes changes to aspects of the protection order hearing process.
- Modifies standards and procedures for entry of protection orders and relief that may be granted.
- Addresses violations and enforcement by specifying required court appearances following an arrest or criminal charge, and revises the types of orders included under the offense of unlawful possession of a firearm.
- Revises provisions governing modification or termination to address adding a new child to an order and who may file a petition for modification or termination of a vulnerable adult protection order.

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.

- Requires the Gender and Justice Commission to include as part of its work on protection order laws consideration of a study on the impact of including coercive control, and specifies possible parameters for the study.

SENATE COMMITTEE ON LAW & JUSTICE

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Background: In 2021, the Legislature enacted E2SHB 1320, which established a new chapter of law to govern all types of protection orders, including domestic violence protection orders (DVPOs), sexual assault protection orders (SAPOs), stalking protection orders (Stalking POs), anti-harassment protection orders (AHPOs), vulnerable adult protection orders (VAPOs), and extreme risk protection orders (ERPOs). E2SHB 1320, consolidated, harmonized, and updated what had been six separate civil protection order laws with different processes.

Uniformity. E2SHB 1320 provides uniformity in the rules and procedures that govern protection order petitions and proceedings, including in the areas of:

- filing and service of petitions;
- conduct of hearings;
- available remedies; and
- modification, termination, and enforcement of protection orders.

The use of technology for electronic service, online filing, and remote hearings is also required.

Court Jurisdiction. E2SHB 1320 retained the existing differing approaches to the subject matter jurisdiction of superior courts and courts of limited jurisdiction to hear protection order proceedings. It directed the Administrative Office of the Courts (AOC), through the Gender and Justice Commission (Commission), to study and make recommendations on whether jurisdiction should be harmonized, modified, or consolidated. The Commission's recommendations relating to jurisdiction include:

- harmonize the circumstances that require transfer of cases to the superior court for DVPOs, SAPOs, Stalking POs, and AHPOs, and improve the transfer process to create more uniformity and clarity;
- permit direct filing of petitions in superior court where circumstances are alleged that would ultimately require a transfer; and
- evaluate the existing jurisdiction of municipal courts in light of constitutional concerns.

Coercive Control. The Commission was tasked with making recommendations to the

Legislature on additional topics, including how protection order law can more effectively address the type of abuse known as coercive control. The Commission provided the following recommendations:

- include coercive control in the definition of domestic violence under the civil protection order laws;
- define coercive control with elements that include specific examples of tactics and abusive behaviors that are coercive and controlling; and limiting principles to distinguish the conduct from self-protective or defensive tactics or situational conflict; and
- include coercive control as a subject on which judicial officers should receive training, and allocate funding for the AOC to develop evidence-based training and resources for judicial officers on coercive control.

Summary of Bill: The laws governing civil protection orders are amended to implement recommendations of the Commission relating to jurisdiction of courts over protection order proceedings and inclusion of coercive control in the definition of domestic violence. Numerous additional changes are made to provisions of the protection order law, including in areas relating to filing and service of petitions; hearing procedures; issuance of orders, including duration and relief; violations and enforcement; and modification or termination of orders.

Definitions. The definition of intimate partner is revised to provide that the term does not include persons who have a child in common where the child is conceived through sexual assault.

The definition of domestic violence is modified to include coercive control. Coercive control is defined to mean a pattern of behavior that is used to cause another to suffer physical, emotional, or psychological harm, and in purpose or effect unreasonably interferes with a person's free will and personal liberty. In determining whether the interference is unreasonable, the court must consider the context and impact of the pattern of behavior from the perspective of a similarly situated person.

Examples of coercive control include, but are not limited to:

- intimidation,controlling or compelling conduct;
- causing dependence, confinement, or isolation of the other party from friends, relatives, or other sources of support;
- depriving the other party of basic necessities or committing other forms of financial exploitation;
- controlling, exerting undue influence over, interfering with, regulating, or monitoring the other party's movements, communications, daily behavior, finances, economic resources, or employment;
- engaging in vexatious or abusive litigation harass, coerce, or control the other party, or
- engaging in psychological aggression, including by inflicting fear and humiliation.

Coercive control does not include protective actions taken by a party in good faith for the legitimate and lawful purpose of protecting themselves or children from the risk of harm posed by the other party.

Court Jurisdiction. The superior and district courts have jurisdiction over proceedings for DVPOs, SAPOs, Stalking POs, and AHPOs, except such proceedings must be transferred from district court to superior court when:

- a superior court has exercised or is exercising jurisdiction over a proceeding involving the parties;
- the action would have the effect of interfering with a respondent's care, control, or custody of the respondent's minor child;
- the action would affect the use or enjoyment of real property for which the respondent has a cognizable claim or would exclude a party from a shared dwelling;
- the petitioner, victim, or respondent to the petition is under 18 years of age; or
- the district court is unable to verify whether there are potentially conflicting or related orders involving the parties.

Transfer orders must indicate the circumstances supporting the transfer. Courts must make publicly available in print and online information about their transfer procedures, court calendars, and judicial officer assignment. Provisions granting jurisdiction over protection order proceedings to municipal courts are removed.

Filing. When a petition meets the criteria for a different type of protection order other than the one sought, the court must consider the petitioner's preference, and enter a temporary protection order or set the matter for a hearing. The appropriate type of order must not be based on alleviating potential stigma on the respondent. In an ex parte DVPO, there is a rebuttable presumption that the court include the petitioner's minor children as protected parties unless there is good cause not to include the minor children.

Protection order petitions and supporting documents that are submitted after business hours must be processed as soon as possible on the next judicial day. Court systems that allow a petitioner to track the progress of a case must include notification of when the respondent has filed a motion for the release of surrendered firearms.

Clerks must make available electronically to judicial officers any protection orders filed within the state. Clerks must accept and provide community resource lists and accept translations of the lists from the programs that provided them.

The timeline by which the AOC must complete specified tasks, including development of a single petition form and preparation of instructional brochures and a protection order handbook, is delayed until December 30, 2022.

Service. A petition for a VAPO that is filed by someone other than the vulnerable adult is

added to the types of orders that require personal service. In cases where personal service is required, after two unsuccessful attempts, service must be permitted by electronic means. Service by mail is permitted when: personal service was required, there have been two unsuccessful attempts at personal service, and electronic service is not possible; or personal service is not required and there have been two unsuccessful attempts at personal or electronic service. Service is completed on the day the respondent is served personally, on the date of transmission for electronic service, on the tenth calendar day after mailing for service by mail, or on the date of the third publication when publication has been made for three consecutive weeks for service by publication.

Hearings. Hearings may be conducted upon the information provided in the petition, live testimony of the parties if they choose to testify, and any additional sworn declarations. When a court resets a hearing date and reissues a temporary protection order, the hearing date must be reset no later than 14 days from the reissue date, except if the court permits service by mail or by publication, the court must reset the hearing date not later than 30 days from the date of the order authorizing such service. These time frames may be extended for good cause.

Orders. A court may grant an ex parte temporary protection order where it appears that immediate serious harm, in addition to irreparable injury, could result if an order is not issued immediately. In an AHPO proceeding, the court may order the following relief only as part of a full protection order: excluding the respondent from the residence shared by the parties; making residential provisions with regard to minor children of the parties; and providing financial relief and restraining transfer of jointly owned assets. When a court orders law enforcement assistance in the execution of a protection order, any appropriate law enforcement agency should act where assistance is needed, even if not specifically named in the order, including assisting with the recovery of firearms.

For ERPOs and protection orders that include an order to surrender weapons, the respondent must immediately surrender all firearms and any concealed pistol license not previously surrendered to a local law enforcement agency on the day of the hearing at which the respondent was present in person or remotely. If the respondent is in custody, arrangements to recover the firearms must be made prior to release. Any firearms surrendered under an ERPO must be handled and stored properly to prevent damage or degradation, and the condition of the firearms documented, including by digital photograph.

Violations and Enforcement. A defendant arrested for violating a protection order must appear in person before a magistrate within one judicial day after the arrest. At the time of appearance, the court must determine the necessity of imposing a no contact order or other conditions of pretrial release. A defendant charged with violating a protection order and not arrested must appear in court for arraignment as soon as practicable, but no later than 14 days after the next day on which the court is in session following the citation, filing, or information.

The crime of unlawful possession of a firearm in the second degree is amended to prohibit possession of a firearm based on a conviction for violating the restraint provisions of any type of protection order.

Modification or Termination. 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 only if the child is already in the physical custody of the petitioner. If the restrained person is the legal or biological parent of the child, a hearing must be set and notice given to the restrained person prior to final modification of the full protection order. A motion to modify or terminate a VAPO may be brought by a vulnerable adult who is not subject to an order under the Uniform Guardianship Act (UGA). Where a vulnerable adult is subject to an order under the UGA, the vulnerable adult, or the vulnerable adult's guardian, conservator, or person acting on behalf of the vulnerable adult under a protective arrangement, may file a petition for modification or termination if that is within the person's authority under the guardianship, conservatorship, or protective arrangement.

Other. Training for judicial officers should be evidence-based, and should include training on coercive control. The Commission is directed to include as part of its work on protection order laws consideration of a study on the impact of the inclusion of coercive control. At the conclusion of the study, a report to the Legislature will be provided. By July 1, 2022, the Commission must advise the chairs of the relevant policy committees of the Legislature of its recommendations regarding need, timing, and design for such a study.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill contains several effective dates. Please refer to the bill.