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**SUBSTITUTE HOUSE BILL 1560**

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**State of Washington                      52nd Legislature                      1991 Regular Session**

**By** House Committee on Judiciary (originally sponsored by Representative Appelwick).

Read first time February 6, 1991.

1            AN ACT Relating to court orders; amending RCW 26.50.050, 26.50.070,  
2 26.50.090, 10.14.070, 10.14.080, and 10.14.100; adding new sections to  
3 chapter 26.50 RCW; and adding new sections to chapter 10.14 RCW.

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

5            **Sec. 1.** RCW 26.50.050 and 1984 c 263 s 6 are each amended to read  
6 as follows:

7            Upon receipt of the petition, the court shall order a hearing which  
8 shall be held not later than fourteen days from the date of the order.  
9 Except as provided in section 3 of this act, personal service shall be  
10 made upon the respondent not less than five court days prior to the  
11 hearing. If timely personal service cannot be made, the court may set  
12 a new hearing date or issue an order for service by publication and  
13 issue an order for protection as provided in sections 3 and 4 of this  
14 act.

1       **Sec. 2.** RCW 26.50.070 and 1989 c 411 s 2 are each amended to read  
2 as follows:

3       (1) Where an application under this section alleges that  
4 irreparable injury could result from domestic violence if an order is  
5 not issued immediately without prior notice to the respondent, the  
6 court may grant an ex parte temporary order for protection, pending a  
7 full hearing, and grant relief as the court deems proper, including an  
8 order:

9       (a) Restraining any party from committing acts of domestic  
10 violence;

11       (b) Excluding any party from the dwelling shared or from the  
12 residence of the other until further order of the court;

13       (c) Restraining any party from interfering with the other's custody  
14 of the minor children or from removing the children from the  
15 jurisdiction of the court; and

16       (d) Restraining any party from having any contact with the victim  
17 of domestic violence or the victim's children or members of the  
18 victim's household.

19       (2) Irreparable injury under this section includes but is not  
20 limited to situations in which the respondent has recently threatened  
21 petitioner with bodily injury or has engaged in acts of domestic  
22 violence against the petitioner.

23       (3) The court shall hold an ex parte hearing in person or by  
24 telephone on the day the petition is filed or on the following judicial  
25 day.

26       (4) Except as provided in section 4 of this act, an ex parte  
27 temporary order for protection shall be effective for a fixed period  
28 not to exceed fourteen days, but may be reissued. A full hearing, as  
29 provided in this chapter, shall be set for not later than fourteen days  
30 from the issuance of the temporary order. Except as provided in

1 section 3 of this act, the respondent shall be served with a copy of  
2 the ex parte order along with a copy of the petition and notice of the  
3 date set for the hearing.

4 NEW SECTION. Sec. 3. A new section is added to chapter 26.50 RCW  
5 to read as follows:

6 (1) If the respondent was not personally served with the petition,  
7 notice of hearing, and ex parte order before the hearing, the court may  
8 reset the hearing and order service by publication instead of personal  
9 service under the following circumstances:

10 (a) The sheriff or municipal officer files an affidavit stating  
11 that the officer was unable to complete personal service upon the  
12 respondent. The affidavit must describe the number and types of  
13 attempts the officer made to complete service;

14 (b) The petitioner files an affidavit stating that the petitioner  
15 believes that the respondent is hiding from the server to avoid  
16 service. The petitioner's affidavit must state the reasons for the  
17 belief that the petitioner is avoiding service;

18 (c) The server has deposited a copy of the summons, in  
19 substantially the form prescribed in subsection (3) of this section,  
20 notice of hearing, and the ex parte order of protection in the post  
21 office, directed to the respondent at the respondent's last known  
22 address, unless the server states that the server does not know the  
23 respondent's address; and

24 (d) The court finds reasonable grounds exist to believe that the  
25 respondent is concealing himself or herself to avoid service, and that  
26 further attempts to personally serve the respondent would be futile or  
27 unduly burdensome.

1 (2) The court may reissue the temporary order of protection not to  
2 exceed another fourteen days from the date of reissuing the ex parte  
3 protection order and order to provide service by publication.

4 (3) The publication shall be made in a newspaper of general  
5 circulation in the county where the petition was brought once a week  
6 for two consecutive weeks. The publication of summons shall not be  
7 made until the court orders service by publication under this section.  
8 Service of the summons shall be considered complete at the expiration  
9 of the fourteen days. The summons must be signed by the petitioner.  
10 The summons shall contain the date of the first publication, and shall  
11 require the respondent upon whom service by publication is desired, to  
12 appear and answer the petition within fourteen days from the date of  
13 the first publication of the summons. The summons shall also contain  
14 a brief statement of the reason for the petition and a summary of the  
15 provisions under the ex parte order. The summons shall be essentially  
16 in the following form:

17 In the ..... court of the state of Washington for the  
18 county of .....

19 ....., Petitioner  
20 vs. No. ....  
21 ....., Respondent

22 The state of Washington to ..... (respondent):

23 You are hereby summoned to appear within fourteen days after the  
24 date of the first publication of this summons, that is, within fourteen  
25 days after the ..... day of ....., 19...., and respond to the  
26 petition. If you fail to respond, a permanent order of protection will

1 be issued against you for one year from the date you are required to  
2 appear, under the provisions of the domestic violence protection act,  
3 chapter 26.50 RCW. A temporary order of protection has been issued  
4 against you, restraining you from the following: (insert a brief  
5 statement of the provisions of the ex parte order). A copy of the  
6 petition, notice of hearing, and ex parte order has been filed with the  
7 clerk of this court.

8 .....  
9 Petitioner .....

10 NEW SECTION. **Sec. 4.** A new section is added to chapter 26.50 RCW  
11 to read as follows:

12 Following completion of service by publication as provided in  
13 section 3 of this act, if the respondent fails to appear at the  
14 hearing, the court may issue a permanent order of protection extending  
15 the provisions of the ex parte order of protection under RCW 26.50.070  
16 to one year from the date of the hearing. That order must be served  
17 pursuant to RCW 26.50.090, and forwarded to the appropriate law  
18 enforcement agency pursuant to RCW 26.50.100.

19 **Sec. 5.** RCW 26.50.090 and 1985 c 303 s 6 are each amended to read  
20 as follows:

21 (1) An order issued under this chapter shall be personally served  
22 upon the respondent, except as provided in subsections (6) and (8) of  
23 this section.

24 (2) The sheriff of the county or the peace officers of the  
25 municipality in which the respondent resides shall serve the respondent  
26 personally unless the petitioner elects to have the respondent served  
27 by a private party.

1 (3) If service by a sheriff or municipal peace officer is to be  
2 used, the clerk of the court shall have a copy of any order issued  
3 under this chapter forwarded on or before the next judicial day to the  
4 appropriate law enforcement agency specified in the order for service  
5 upon the respondent. Service of an order issued under this chapter  
6 shall take precedence over the service of other documents unless they  
7 are of a similar emergency nature.

8 (4) If the sheriff or municipal peace officer cannot complete  
9 service upon the respondent within ten days, the sheriff or municipal  
10 peace officer shall notify the petitioner. The petitioner shall  
11 provide information sufficient to permit notification.

12 (5) Returns of service under this chapter shall be made in  
13 accordance with the applicable court rules.

14 (6) If an order entered by the court recites that the respondent  
15 appeared in person before the court, the necessity for further service  
16 is waived and proof of service of that order is not necessary.

17 (7) Except in cases where the petitioner is granted leave to  
18 proceed in forma pauperis, municipal police departments serving  
19 documents as required under this chapter may collect the same fees for  
20 service and mileage authorized by RCW 36.18.040 to be collected by  
21 sheriffs.

22 (8) If the court previously entered an order allowing service of  
23 the petition, notice of hearing, and ex parte order by publication,  
24 because the court found that the respondent is concealing himself or  
25 herself to avoid service, then further attempts to personally serve the  
26 order is not necessary, if the court finds that service by publication  
27 satisfied the requirement of sections 3 and 4 of this act.

28 **Sec. 6.** RCW 10.14.070 and 1987 c 280 s 7 are each amended to read  
29 as follows:

1       Upon receipt of the petition, the court shall order a hearing  
2 which shall be held not later than fourteen days from the date of the  
3 order. Except as provided in section 8 of this act, personal service  
4 shall be made upon the respondent not less than five court days before  
5 the hearing. If timely personal service cannot be made, the court may  
6 set a new hearing date or issue an order for service by publication and  
7 issue an order for protection as provided in sections 8 and 9 of this  
8 act.

9       **Sec. 7.** RCW 10.14.080 and 1987 c 280 s 8 are each amended to read  
10 as follows:

11       (1) Upon filing a petition for a civil antiharassment protection  
12 order under this chapter, the petitioner may obtain an ex parte  
13 temporary antiharassment protection order. An ex parte temporary  
14 antiharassment protection order may be granted with or without notice  
15 upon the filing of an affidavit which, to the satisfaction of the  
16 court, shows reasonable proof of unlawful harassment of the petitioner  
17 by the respondent and that great or irreparable harm will result to the  
18 petitioner if the temporary antiharassment protection order is not  
19 granted.

20       (2) Except as provided in section 9 of this act, an ex parte  
21 temporary antiharassment protection order shall be effective for a  
22 fixed period not to exceed fourteen days, but may be reissued. A full  
23 hearing, as provided in this chapter, shall be set for not later than  
24 fourteen days from the issuance of the temporary order. Except as  
25 provided in section 8 of this act, the respondent shall be personally  
26 served with a copy of the ex parte order along with a copy of the  
27 petition and notice of the date set for the hearing.

28       (3) At the hearing, if the court finds by a preponderance of the  
29 evidence that unlawful harassment exists, a civil antiharassment

1 protection order shall issue prohibiting such unlawful harassment. An  
2 order issued under this chapter shall be effective for not more than  
3 one year. At any time within the three months before the expiration of  
4 the order, the petitioner may apply for a renewal of the order by  
5 filing a new petition under this chapter.

6 (4) The court, in granting an ex parte temporary antiharassment  
7 protection order or a civil antiharassment protection order, shall have  
8 broad discretion to grant such relief as the court deems proper,  
9 including an order:

10 (a) Restraining the respondent from making any attempts to contact  
11 the petitioner;

12 (b) Restraining the respondent from making any attempts to keep the  
13 petitioner under surveillance; and

14 (c) Requiring the respondent to stay a stated distance from the  
15 petitioner's residence and workplace.

16 (5) A petitioner may not obtain an ex parte temporary  
17 antiharassment protection order against a respondent if the petitioner  
18 has previously obtained two such ex parte orders against the same  
19 respondent but has failed to obtain the issuance of a civil  
20 antiharassment protection order unless good cause for such failure can  
21 be shown.

22 NEW SECTION. **Sec. 8.** A new section is added to chapter 10.14 RCW  
23 to read as follows:

24 (1) If the respondent was not personally served with the petition,  
25 notice of hearing, and ex parte order before the hearing, the court may  
26 reset the hearing and order service by publication instead of personal  
27 service under the following circumstances:

28 (a) The sheriff or municipal officer files an affidavit stating  
29 that the officer was unable to complete personal service upon the

1 respondent. The affidavit must describe the number and types of  
2 attempts the officer made to complete service;

3 (b) The petitioner files an affidavit stating that the petitioner  
4 believes that the respondent is hiding from the server to avoid  
5 service. The petitioner's affidavit must state the reasons for the  
6 belief that the petitioner is avoiding service;

7 (c) The server has deposited a copy of the summons, in  
8 substantially the form prescribed in subsection (3) of this section,  
9 notice of hearing, and the ex parte order of protection in the post  
10 office, directed to the respondent at the respondent's last known  
11 address, unless the server states that the server does not know the  
12 respondent's address; and

13 (d) The court finds reasonable grounds exist to believe that the  
14 respondent is concealing himself or herself to avoid service, and that  
15 further attempts to personally serve the respondent would be futile or  
16 unduly burdensome.

17 (2) The court may reissue the temporary order of protection not to  
18 exceed another fourteen days from the date of reissuing the ex parte  
19 protection order and order to provide service by publication.

20 (3) The publication shall be made in a newspaper of general  
21 circulation in the county where the petition was brought once a week  
22 for two consecutive weeks. The publication of summons shall not be  
23 made until the court orders service by publication under this section.  
24 Service of the summons shall be considered complete at the expiration  
25 of the fourteen days. The summons must be signed by the petitioner.  
26 The summons shall contain the date of the first publication, and shall  
27 require the respondent upon whom service by publication is desired, to  
28 appear and answer the petition within fourteen days from the date of  
29 the first publication of the summons. The summons shall also contain  
30 a brief statement of the reason for the petition and a summary of the

1 provisions under the ex parte order. The summons shall be essentially  
2 in the following form:

3 In the ..... court of the state of Washington for the  
4 county of .....

5 ....., Petitioner  
6 vs. No. ....  
7 ....., Respondent

8 The state of Washington to ..... (respondent):

9 You are hereby summoned to appear within fourteen days after the  
10 date of the first publication of this summons, that is, within fourteen  
11 days after the ..... day of ....., 19...., and respond to the  
12 petition. If you fail to respond, a permanent order of protection will  
13 be issued against you for one year from the date you are required to  
14 appear, under the provisions of the domestic violence protection act,  
15 chapter 26.50 RCW. A temporary order of protection has been issued  
16 against you, restraining you from the following: (insert a brief  
17 statement of the provisions of the ex parte order). A copy of the  
18 petition, notice of hearing, and ex parte order has been filed with the  
19 clerk of this court.

20 .....  
21 Petitioner .....

22 NEW SECTION. **Sec. 9.** A new section is added to chapter 10.14 RCW  
23 to read as follows:

1       Following completion of service by publication as provided in  
2 section 8 of this act, if the respondent fails to appear at the  
3 hearing, the court may issue a permanent order of protection extending  
4 the provisions of the ex parte order of protection under RCW 10.14.080  
5 to one year from the date of the hearing. That order must be served  
6 pursuant to RCW 10.14.100, and forwarded to the appropriate law  
7 enforcement agency pursuant to RCW 10.14.110.

8       **Sec. 10.** RCW 10.14.100 and 1987 c 280 s 10 are each amended to  
9 read as follows:

10       (1) An order issued under this chapter shall be personally served  
11 upon the respondent, except as provided in subsections (5) and (7) of  
12 this section.

13       (2) The sheriff of the county or the peace officers of the  
14 municipality in which the respondent resides shall serve the respondent  
15 personally unless the petitioner elects to have the respondent served  
16 by a private party.

17       (3) If the sheriff or municipal peace officer cannot complete  
18 service upon the respondent within ten days, the sheriff or municipal  
19 peace officer shall notify the petitioner.

20       (4) Returns of service under this chapter shall be made in  
21 accordance with the applicable court rules.

22       (5) If an order entered by the court recites that the respondent  
23 appeared in person before the court, the necessity for further service  
24 is waived and proof of service of that order is not necessary.

25       (6) Except in cases where the petitioner is granted leave to  
26 proceed in forma pauperis, municipal police departments serving  
27 documents as required under this chapter may collect the same fees for  
28 service and mileage authorized by RCW 36.18.040 to be collected by  
29 sheriffs.

1       (7) If the court previously entered an order allowing service of  
2 the petition, notice of hearing, and ex parte order by publication,  
3 because the court found that the respondent is concealing himself or  
4 herself to avoid service, then further attempts to personally serve the  
5 order is not necessary, if the court finds that service by publication  
6 satisfied the requirement of sections 8 and 9 of this act.

7       NEW SECTION. Sec. 11. A new section is added to chapter 26.50 RCW  
8 to read as follows:

9       As an alternative to the fourteen-day time period for personal  
10 service provided in RCW 26.50.050, 26.50.070, and section 3 of this  
11 act, the superior court or district court, by local rule, may adopt a  
12 time period for personal service of twenty-one days.

13       This section shall expire one year after the effective date of this  
14 act.

15       NEW SECTION. Sec. 12. A new section is added to chapter 10.14 RCW  
16 to read as follows:

17       As an alternative to the fourteen-day time period for personal  
18 service provided in RCW 10.14.080, 10.14.100, and section 8 of this  
19 act, the superior court or district court, by local rule, may adopt a  
20 time period for personal service of twenty-one days.

21       This section shall expire one year after the effective date of this  
22 act.