

FINAL BILL REPORT

SHB 1565

C 137 L 11
Synopsis as Enacted

Brief Description: Concerning the modification and termination of domestic violence protection orders.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Frockt, Rodne, Pedersen, Eddy, Goodman, Roberts, Walsh, Green, Jacks, Fitzgibbon, Reykdal, Kenney, Stanford, Billig and Kelley).

House Committee on Judiciary
Senate Committee on Human Services & Corrections

Background:

A victim of domestic violence (the petitioner) may obtain a domestic violence protection order against a respondent. The court may provide several types of relief, including electronic monitoring, domestic violence perpetrator treatment, and a requirement that the respondent refrain from contacting the petitioner. Violation of a domestic violence protection order is a gross misdemeanor unless the respondent has two prior convictions for violating a domestic violence protection order or other similar federal or out-of-state order, in which case the violation is a class C felony.

If the court grants a protection order for a fixed time period, the petitioner may apply for renewal of the order. The court must grant a renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume acts of domestic violence.

The court may issue an order exceeding one year or issue a permanent order if it finds that the respondent is likely to resume acts of domestic violence. A temporary or permanent order may be modified or terminated upon a motion by either the petitioner or respondent. However, the statute does not specify the grounds upon which modification should be granted or assign the burden of proof to one party or the other.

In a 2010 case, *In Re Marriage of Freeman*, the Washington Supreme Court (Court) reviewed the denial of a respondent's motion for termination of a protection order. The Court determined that a respondent bears the same burden of proof in a motion for termination or modification as is required to overcome a petition for renewal. The respondent must prove by a preponderance of the evidence that he or she will refrain from resuming acts of domestic

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violence. In granting the motion to terminate, the Court considered many factors, including the passage of time since the order was entered and the relocation of the respondent to a geographic area far from the petitioner. The Court declined to order the respondent to pay the petitioner's costs and attorneys' fees.

Summary:

The Legislature finds that some of the factors articulated in the Court's decision in *In Re Marriage of Freeman* place an improper burden on petitioners and are not demonstrative of a respondent's likelihood to resume acts of domestic violence. A procedure is set forth for bringing a motion to modify or terminate a permanent domestic violence protection order or an order issued for a period of greater than two years. Standards are established regarding motions by respondents for modification and termination of permanent domestic violence protection orders and orders issued for a period of greater than two years.

Service.

A motion to modify or terminate an order must be personally served on the nonmoving party no fewer than five days prior to the hearing.

When a respondent files a motion for modification or termination, a licensed process server, sheriff, or other local law enforcement must personally serve the petitioner. If a petitioner files the motion, he or she may achieve service through another private party.

Motion and Affidavit.

A respondent's motion for modification or termination must include an affidavit stating the facts in support of modification or termination. The petitioner may file opposing affidavits. Upon reviewing the affidavits, the court must dismiss the motion unless there is adequate cause for a hearing.

Standard of Proof.

If a respondent's motion is for termination, the respondent bears the burden of proving by a preponderance of the evidence that there has been a substantial change in circumstances such that he or she is not likely to resume acts of domestic violence. In determining whether there has been a "substantial change in circumstances," the court may consider the list of provided factors.

The court may not grant a motion solely based on the fact that time has passed without violations or the fact that the respondent or petitioner has relocated to an area more distant from the other party. Regardless of whether there is a substantial change in circumstances, the court may decline to terminate a protection order if it finds that the acts of domestic violence that brought about the order were of such severity that the order should not be terminated.

If a respondent's motion is for modification, the respondent bears the burden of proving by a preponderance of the evidence that modification is warranted and would not diminish the protections provided to the petitioner. If modifying the protection order would reduce the duration of the order or would eliminate provisions that restrain the respondent from harassing, stalking, threatening, or committing other acts of domestic violence, the court

must consider the list of provided factors relating to whether there has been a substantial change in circumstances.

A petitioner bears no burden of proving that he or she has a current reasonable fear of imminent harm by the respondent in either a motion for modification or termination.

Costs and Attorneys' Fees.

The court may require a respondent to pay court costs and service fees in addition to a petitioner's costs and attorneys' fees incurred in responding to a motion.

Votes on Final Passage:

House	97	0
Senate	48	0

Effective: July 22, 2011