

HOUSE BILL REPORT

ESSB 5219

As Reported By House Committee On:

Law & Justice

Title: An act relating to domestic violence.

Brief Description: Changing domestic violence provisions.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Smith, Roach, C. Anderson, Long, Haugen, McCaslin, Spanel, Drew, Winsley, Kohl and Sheldon).

Brief History:

Committee Activity:

Law & Justice: 3/29/95, 3/31/95 [DPA].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended. Signed by 16 members: Representatives Sheahan, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Appelwick, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Campbell; Carrell; Chappell; Cody; Lambert; McMahan; Morris; Robertson; Smith; Thibaudeau and Veloria.

Staff: Pat Shelledy (786-7149).

Background: A person who is afraid for his or her safety or the safety of his or children or other family members may obtain court ordered protection under a variety of statutory schemes. Some of those schemes are civil and some are criminal. Those schemes are as follows:

1. DOMESTIC VIOLENCE:

A. CRIMINAL

When one family or household member commits one of several designated crimes against another family or household member, the court may issue a "no-contact" order prohibiting the defendant from having any contact with the victim. The crime of "stalking" is not currently listed as a crime of domestic violence. "Family or household members" mean spouses, ex-spouses, persons who have a child in

common, adults related by blood or marriage, and adults who live together or who have lived together in the past. The order must advise the defendant that a violation is a criminal offense and will subject the person to arrest. The order does not have to notify the defendant that the victim may not waive the protection order by inviting or allowing the respondent to violate the order. The order will be in effect for one year unless the order specifies an expiration date.

B. CIVIL

A person who is a victim of domestic violence may petition for a "domestic violence protection order" even if no criminal charges are pending. The definition of "family or household member" is much broader than the criminal provisions and includes persons 16 years of age or older who live together or have lived together or who have had a dating relationship, and persons who are biologically or legally related such as parents, stepparents, or grandparents and children.

A filing fee of \$20 is charged to obtain a civil protection order unless the court finds that the petitioner lacks the funds to pay the costs of filing and other court related fees. The filing fees are deposited in the public safety and education account which is split between state and local governments.

The court may allow service by publication under certain circumstances. Service by mail only is not authorized.

A violation of a domestic violence protection order is a misdemeanor unless the respondent commits an assault or reckless endangerment when violating the order.

2. HARASSMENT:

A comparable scheme of protection has been developed to protect individuals who are not "family or household members" within the meaning of the domestic violence provisions, but are subject to harassment or threats of physical injury or harm by another person.

A. CRIMINAL

A variety of crimes are considered crimes of "harassment," including stalking. The court may issue a no-contact order when a defendant is arrested or charged with a crime of harassment.

B. CIVIL

The civil scheme for granting an antiharassment protection order is similar to the scheme for domestic violence protection orders.

3. DOMESTIC RELATIONS CASES:

"Domestic violence protection orders" and "antiharassment protection orders" are not technically available in domestic relations actions. Instead, the court may issue a "restraining order."

A. DIVORCE

The court may issue a temporary or permanent **restraining** order in an action for divorce or legal separation. A restraining order may prevent a party from disposing of property, molesting or disturbing the other party's peace, entering the family home, or removing a child from the jurisdiction. Restraining orders that prevent a party from molesting or disturbing the peace of the other party must warn the respondent that a violation is a crime. The court may order that a restraining order be placed into the computer-based criminal intelligence information system for one year.

B. THIRD-PARTY ACTIONS FOR CHILD CUSTODY

The restraining order provisions contained in provisions governing third-party actions for child custody are the same as provisions in the divorce statutes.

C. PATERNITY CASES

Similar provisions authorizing the court to issue a restraining order exist in the paternity statutes.

4. MISCELLANEOUS PROVISIONS:

A. NAME CHANGES

District courts have jurisdiction over name changes except the superior court may grant a name change in divorce actions.

B. JUDICIAL INFORMATION SYSTEM

OAC operates the judicial information system (JIS). OAC's budget request anticipates upgrading all district courts to get on-line with JIS. The House budget funds JIS at \$6,709,000 which includes funding for expansion of the computer system.

C. INTERPRETERS

If a hearing impaired person is a party or witness in a civil or criminal judicial or quasi-judicial proceeding, the government must appoint and pay for an interpreter. If a non-English speaking person is a party, an interpreter must be appointed. The non-English speaking person must pay for the interpreter in legal proceedings that are not initiated by the government, unless the person is indigent, in which case the government will pay for the interpreter. In cases in which a party is subpoenaed or summoned to appear or in cases initiated by the government, the government must pay for the interpreter.

D. ARREST WITHOUT A WARRANT

A police officer has authority to arrest a person without a warrant if the person violates a no-contact order or protection order issued under one of several statutes. The statute that authorizes warrantless arrest does not cross-reference some statutes that also authorize issuance of restraining orders. An officer may also arrest without a warrant a person age 18 or older if the person has committed an assault within the preceding four hours against the person's spouse, former spouse, or a person who lives with or has lived with the assailant.

Summary of Amended Bill: A variety of changes are made to provisions governing issuance of domestic violence protection orders and no-contact orders.

1. DOMESTIC RELATIONS:

A. CRIMINAL

Stalking is added to the list of crimes that constitute domestic violence under the criminal system.

The definition of "family or household members" is expanded to be the same definition of "family or household members" in the civil system.

Domestic violence protection orders must warn respondents that they can be arrested for violating an order even if the petitioner invites or allows the respondent to violate the order.

The Criminal Justice Training Commission must implement by January 1, 1997, a course of instruction for training law enforcement officers in handling domestic violence complaints. The curriculum must include at least 20 hours of basic training. The commission must also develop a domestic violence program for in-service training. The Criminal Justice Training Commission must also develop an educational manual and training curriculum for prosecutors. The manual must be distributed by July 1, 1988.

B. CIVIL

The definition of domestic violence in the civil system is expanded to include stalking.

Violations of domestic violence protection orders are raised to gross misdemeanors from misdemeanors.

A petitioner may not be charged a filing fee for a domestic violence protection order or for certified copies.

The court may schedule a hearing by telephone on a petition for a domestic violence protection order pursuant to local court rule, to accommodate a disability or in exceptional cases to protect a petitioner from violence.

The court may specifically exclude a respondent from the petitioner's workplace or school or from the child's day care or school.

The court may also order that the petitioner may take possession of essential personal effects. The court must list those items with specificity to clarify what is included.

If a court declines to issue a domestic violence protection order or to renew one, the court must state its reasons in writing. Ex parte temporary orders must contain the date and time of issuance and the expiration date, and must be entered into the statewide judicial information system.

Before a court grants a protection order that directs the residential placement of a child or restrains or limits a party's contact with a child, the court must consult the judicial information system to determine if other actions are pending involving the residential placement of the child.

If a law enforcement officer serves a copy of a protection order on a respondent, the officer must give the petitioner a receipt indicating the respondent has been served. Presentation of an unexpired, certified copy of a protection order is sufficient to enforce the order, even if the order is not on the computer system.

The court may order service of an order of protection be made by mail under circumstances justifying service by publication if the court finds that service by mail is just as likely to give actual notice and the petitioner is unable to afford the cost of service by publication. Service is considered complete upon mailing.

OAC must determine the significant non-English speaking or limited English speaking populations in the state and translate the forms and instructions into those languages. The translated forms must be distributed to the court clerks by January 1, 1997.

OAC must report to the Legislature about the progress of the translations at the beginning of the 1996 session.

2. HARASSMENT:

Civil and criminal provisions concerning antiharassment protection orders remain the same, except a provision is added that civil antiharassment orders may be issued in domestic relations cases, and the one-year limitation on the order does not apply when the order is issued in domestic relations cases.

3. DOMESTIC RELATIONS CASES:

A domestic violence protection order or an antiharassment protection order may be issued in actions for divorce or legal separation, third-party actions for custody, and paternity actions. If a party files an action under one of those chapters after obtaining a domestic violence protection order through the civil protection scheme, the court may consolidate the orders under the domestic relations action. A petitioner may obtain relief under the civil protection order scheme even if an action for divorce, legal separation, third-party custody, or paternity is pending. When a party files a petition for a domestic violence protection order under the civil scheme, the petitioner must disclose the existence of any other litigation concerning the custody or residential placement of the children. If an action for divorce, legal separation, third-party custody, or paternity is pending, the court may grant a domestic violence protection order or an antiharassment protection order on a temporary basis, but may not grant relief in those orders that pertain to residential provisions for the children.

All restraining orders, domestic violence protection orders, and antiharassment orders issued under domestic relations provisions must be entered into the computer system. Restraining orders must advise the respondent that a violation of the order is a criminal offense. Additional language is added to the restraining order provisions regarding restraining a person from going to the petitioner's home, workplace, school, or a child's day care or school.

4. MISCELLANEOUS:

A. NAME CHANGES

Superior courts may grant petitions for name changes when the petitioner is in reasonable fear for his or her safety or the safety of his or children. The name changes shall be sealed.

B. JUDICIAL INFORMATION SYSTEM

The judicial information system (JIS) must be available in each district, municipal, and superior court by July 1, 1997. The JIS must contain a database providing information about all protection orders issued under the civil protection scheme or the domestic violence statutes and antiharassment statutes.

C. INTERPRETERS

A provision is added to the domestic violence civil provisions that the court must appoint interpreters, including appointment for purposes of preparing the forms.

D. ARREST WITHOUT A WARRANT

Additional statutes that allow a court to issue a restraining order are added to the statute that allows the police to arrest without a warrant a person who violates a protection order or restraining order. The mandatory arrest provision is extended to persons 16 years of age or older (instead of 18) when the person has assaulted a family or household member within the preceding four hours.

Amended Bill Compared to Engrossed Substitute Bill: The provision is stricken that allowed counties to create review boards to evaluate the qualifications of batterers' treatment programs that are approved by the Department of Social and Health Services.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill will increase safety of victims of domestic violence and improve access and procedures. Additional review by the counties of the qualifications of treatment programs for batterers will help prevent unqualified providers treating batterers.

Testimony Against: The Department of Social and Health Services has adequate standards for approval of treatment programs for batterers. Allowing counties to create review boards only creates additional layers of bureaucracy.

Testified: Judge Richards (pro); Mary Pontarolo, Washington State Coalition Against Domestic Violence (pro); Chuck Foster, Office of the Administrator for the Courts (pro); and Ann Eft, King County Judicial Administration (pro).