

# SENATE BILL REPORT

## ESSB 5256

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As Passed Senate, March 8, 2017

**Title:** An act relating to sexual assault protection orders.

**Brief Description:** Concerning sexual assault protection orders.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Fain, Pedersen, Zeiger, Palumbo, Miloscia, Frockt, Darneille, Chase, Kuderer and Hunt).

**Brief History:**

**Committee Activity:** Law & Justice: 2/15/17, 2/16/17 [DPS].

**Floor Activity:**

Passed Senate: 3/08/17, 43-6.

### Brief Summary of Engrossed First Substitute Bill

- Permits a sexual assault protection order to be made permanent rather than limit the protection order to a two year duration.
- Modifies the procedure for renewal of a sexual assault protection order to require renewal upon motion absent a showing by the respondent that the respondent will not engage in or attempt contact with the petitioner after the order expires.
- Establishes procedures for a respondent to petition to terminate or modify the terms of a sexual assault protection order, including terms related to firearms, dangerous weapons, or concealed pistol licenses.
- Permits a court to modify firearms restrictions in a sexual assault protection order as provided in RCW 7.90.170.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5256 be substituted therefor, and the substitute bill do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille, Frockt and Wilson.

**Staff:** Melissa Burke-Cain (786-7755)

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Background:** A person may petition for a sexual assault protection order if they have been subjected to one or more incidents of nonconsensual sexual conduct or penetration that gives rise to a reasonable fear of future dangerous acts by the respondent. Sexual assault protection orders are available for victims of sexual assault who do not qualify for a domestic violence protection order. A sexual assault protection order may restrain the respondent from having any contact with the victim, prohibit the respondent from certain places, and contain other relief as the court deems necessary for protection of the victim.

Upon petition for a sexual assault protection order, the court may issue an ex parte temporary protection order pending the hearing if the court finds that the harm which the order is intended to prevent would likely occur if the respondent were given any prior notice. The temporary order is effective for a fixed period not to exceed 14 days from the issuance of the temporary order. Final sexual assault protection orders are valid for a fixed time not to exceed two years.

Any temporary or final sexual assault protection order may be renewed one or more times. If the request for renewal is uncontested and the petitioner is not seeking a modification, the order may be renewed on the basis of a motion or affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason a renewal is being requested. If a motion for renewal is contested, the court must order a hearing to be held no more than 14 days from receipt of the motion, or 24 days if the court has allowed service by publication or mail.

A court may modify the terms of a sexual assault protection order for another fixed time period after notice to the respondent and a hearing held no later than 14 days after the motion. If an order is terminated or modified before its expiration date, the clerk of the court must forward a copy of the modified order or the termination of the order to the appropriate law enforcement agency for entry in, or removal from, the computer-based criminal intelligence information system.

**Summary of Engrossed First Substitute Bill:** Provisions governing the allowed term of a sexual assault protection order and standards for renewal, modification, or termination of a sexual assault protection order are revised.

Term of an Order. The two-year maximum term for a final sexual assault protection order is changed to allow an order to be made permanent.

Renewal of an Order. A motion to renew an ex parte temporary or nonpermanent final sexual assault protection order must state the reasons for seeking renewal. The court must grant a motion for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not engage in, or attempt contact with, the petitioner after the order expires. The passage of time and compliance with the existing order are not, alone, sufficient to meet the burden of proof.

In determining whether there has been a material change in circumstances, the court may consider only factors that address whether the respondent is likely to engage in, or attempt contact with, the petitioner when the order expires, including whether or not the respondent:

- has committed or threatened sexual assault, domestic violence, stalking, or other violent acts since the order was entered;
- has violated the terms of the order, and how much time has passed since entry of the order;
- has exhibited suicidal ideation or attempts since the order was entered;
- has been convicted of criminal activity since the order was entered;
- has acknowledged responsibility for the acts of sexual assault underling the order or has successfully completed sexual assault perpetrator treatment or counseling since the order was entered;
- has a continuing involvement with drug or alcohol abuse, if such abuse was a factor in the protection order; or
- has relocated to an area more distant from the other party.

Modification or Termination of an Order. The procedures for modification or termination of a sexual assault protection order are revised and standards are established for a respondent to petition for termination or modification, including for modification or termination of restrictions on firearm purchase, transfer, or possession.

The respondent must include a declaration setting forth facts supporting the requested order for termination or modification, and the nonmoving parties may file opposing declarations. The court may set the motion for hearing only if the court finds adequate cause for a hearing based on the declarations. After a hearing, the court may terminate or modify the order if the respondent proves by a preponderance of the evidence that there has been a material change in circumstances such that the respondent is not likely to engage in, or attempt contact with, the protected person if the order is terminated or modified. A respondent may petition for termination or modification once in every 12-month period. A court may require the respondent to pay the petitioner for costs incurred in responding to a motion to terminate or modify, including reasonable attorneys' fees.

**Appropriation:** None.

**Fiscal Note:** Available.

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

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

**Staff Summary of Public Testimony on First Substitute:** PRO: This bill brings the sexual assault protection order law into alignment with other protection orders such as domestic violence protection, stalking, and harassment orders. If the bill passes, a sexual assault victim will not have to come back to court every two years to renew the order. A respondent subject to an order can ask the court to modify or terminate the order, including provisions related to possession of dangerous weapons and concealed carry permits. Approximately 13,000 persons in Washington are served each year by sexual assault programs because they have been impacted by sexual violence. A two year order may not have sufficient duration to protect a victim, for example a high school student assaulted by a classmate in grade nine or ten may continue to attend the same school with the perpetrator until graduation. From a survivor perspective, sex abusers may use emotional terror or threats against family to silence

a victim. It is very tough to confront the abuser in court and more traumatizing to have to go to court multiple times. Sometimes pressure is put on the sex abuse victim to keep silent if the perpetrator is a family member or family friend. In King county, there are approximately 3000 victims per year seeking protection orders related to sexual assault. The information addressing modifying or terminating an order impacting possession of a weapon or a concealed carry permit was a result of hard work in order to have language to address concerns about firearm restrictions.

**Persons Testifying:** PRO: Senator Joe Fain, Prime Sponsor; Andrea Piper-Wentland, WA Coalition of Sexual Assault Programs; Calissa Knox, Survivor; Riddhi Mukhopadhyg, Sexual Violence Legal Services/YWCA; Laura Jones, King County Sexual Assault Resource Center; David Ward, Legal Voice.

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