S-1390.1

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**SUBSTITUTE SENATE BILL 5256**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Fain, Pedersen, Zeiger, Palumbo, Miloscia, Frockt, Darneille, Chase, Kuderer, and Hunt)

AN ACT Relating to sexual assault protection orders; and amending RCW 7.90.120, 7.90.121, and 7.90.170.

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

**Sec.**  RCW 7.90.120 and 2013 c 74 s 3 are each amended to read as follows:

(1)(a) An ex parte temporary sexual assault protection order shall be effective for a fixed period not to exceed fourteen days. A full hearing, as provided in this chapter, shall be set for not later than fourteen days from the issuance of the temporary order or not later than twenty-four days if service by publication or service by mail is permitted. If the court permits service by publication or service by mail, the court shall also reissue the ex parte temporary protection order not to exceed another twenty-four days from the date of reissuing the ex parte protection order. Except as provided in RCW 7.90.050, 7.90.052, or 7.90.053, the respondent shall be personally served with a copy of the ex parte temporary sexual assault protection order along with a copy of the petition and notice of the date set for the hearing.

(b) Any ex parte temporary order issued under this section shall contain the date and time of issuance and the expiration date and shall be entered into a statewide judicial information system by the clerk of the court within one judicial day after issuance.

(2) Except as otherwise provided in this section or RCW 7.90.150, a final sexual assault protection order shall be effective for a fixed period of time((~~, not to exceed two years~~)) or be permanent.

(3) Any sexual assault protection order which would expire on a court holiday shall instead expire at the close of the next court business day.

(4) The practice of dismissing or suspending a criminal prosecution in exchange for the issuance of a sexual assault protection order undermines the purposes of this chapter. This section shall not be construed as encouraging that practice.

**Sec.**  RCW 7.90.121 and 2013 c 74 s 4 are each amended to read as follows:

(1) Any ex parte temporary or nonpermanent final sexual assault protection order may be renewed one or more times, as required.

(2) The petitioner may apply for renewal of the order by filing a motion for renewal at any time within the three months before the order expires. The motion for renewal shall state the reasons why the petitioner seeks to renew the protection order.

(3) ((~~If the motion for renewal is uncontested and the petitioner seeks no modification of the order, the order may be renewed on the basis of the petitioner's motion or affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested renewal.~~)) (a) The court shall grant the motion for renewal unless 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 to engage in physical or nonphysical contact with the petitioner when the order expires.

(b) For purposes of this subsection (3), a court shall determine whether there has been a material change in circumstances by considering only factors which address whether the respondent is likely to engage in or attempt to engage in physical or nonphysical contact with the petitioner when the order expires. The passage of time and compliance with the existing protection order shall not, alone, be sufficient to meet this burden of proof. The court may renew the sexual assault protection order for another fixed time period or may enter a permanent order as provided in this section.

(c) In determining whether there has been a material change in circumstances, the court may consider the following unweighted factors, and no inference is to be drawn from the order in which the factors are listed:

(i) Whether the respondent has committed or threatened sexual assault, domestic violence, stalking, or other violent acts since the protection order was entered;

(ii) Whether the respondent has violated the terms of the protection order and the time that has passed since the entry of the order;

(iii) Whether the respondent has exhibited suicidal ideation or attempts since the protection order was entered;

(iv) Whether the respondent has been convicted of criminal activity since the protection order was entered;

(v) Whether the respondent has either acknowledged responsibility for acts of sexual assault that resulted in entry of the protection order or successfully completed sexual assault perpetrator treatment or counseling since the protection order was entered;

(vi) Whether the respondent has a continuing involvement with drug or alcohol abuse, if such abuse was a factor in the protection order;

(vii) Whether the respondent or petitioner has relocated to an area more distant from the other party, giving due consideration to the fact that acts of sexual assault may be committed from any distance such as via cybercrime;

(viii) Other factors relating to a material change in circumstances.

(4)(a) If the motion is contested, upon receipt of the motion, the court shall order that a hearing be held not later than fourteen days from the date of the order.

(b) The court may schedule a hearing by telephone pursuant to local court rule, to reasonably accommodate a disability, or in exceptional circumstances to protect a petitioner from further nonconsensual sexual conduct or nonconsensual sexual penetration. The court shall require assurances of the petitioner's identity before conducting a telephonic hearing.

(c) The respondent shall be personally served not less than five court days prior to the hearing. If timely personal service cannot be made, the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided in RCW 7.90.052 or service by mail as provided in RCW 7.90.053. The court shall not require more than two attempts at obtaining personal service and shall permit service by publication or service by mail unless the petitioner requests additional time to attempt personal service. If the court permits service by publication or service by mail, the court shall set the hearing date not later than twenty-four days from the date of the order.

(5) Renewals may be granted only in open court.

**Sec.**  RCW 7.90.170 and 2013 c 74 s 9 are each amended to read as follows:

(1) Upon ((~~receipt of~~)) a motion ((~~to~~)) with notice to all parties and after a hearing, the court may terminate or modify the terms of an existing sexual assault protection order, including terms entered pursuant to RCW 9.41.800 related to firearms or other dangerous weapons or to concealed pistol licenses.

(2)(a) A respondent's motion to terminate or modify a sexual assault protection order must include a declaration setting forth facts supporting the requested order for termination or modification. The nonmoving parties to the proceeding may file opposing declarations. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the declarations. If the court finds that the respondent established adequate cause, the court shall set a date for hearing the respondent's motion.

(b) The court may terminate or modify the terms of a sexual assault protection order, including terms entered pursuant to RCW 9.41.800 related to firearms or other dangerous weapons or to concealed pistol licenses, 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 to engage in physical or nonphysical contact with the persons protected by the protection order if the order is terminated or modified. The petitioner bears no burden of proving that he or she has a current reasonable fear of harm by the respondent.

(c) A respondent may file a motion to terminate or modify pursuant to this section no more than once in every twelve-month period that the order is in effect, starting from the date of the order and continuing through any renewal.

(d) A court may require the respondent to pay the petitioner for costs incurred in responding to a motion to terminate or modify pursuant to this section, including reasonable attorneys' fees.

(3) The court shall order that a hearing on the motion for termination or modification of the order be held not later than fourteen days from the date of the order. The ((~~respondent~~)) nonmoving party shall be personally served not less than five days before the hearing. If timely service cannot be made, the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided in RCW 7.90.052 or service by mail as provided in RCW 7.90.053. If the court permits service by mail or service by publication, the court shall set the new hearing date not later than twenty-four days from the date of the order. ((~~If the order expires because timely service cannot be made, the court shall grant an ex parte order of protection as provided in RCW 7.90.110. The court may modify the protection order for another fixed time period or may enter a permanent order as provided in RCW 7.90.120.~~

~~(2)~~)) (4) In any situation where an order is terminated or modified before its expiration date, the clerk of the court shall forward on or before the next judicial day a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modified or termination order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the computer-based criminal intelligence information system, or if the order is terminated, remove the order from the computer-based criminal intelligence information system.

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