

HOUSE BILL REPORT

HB 1901

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to updating laws concerning civil protection orders to further enhance and improve their efficacy and accessibility.

Brief Description: Updating laws concerning civil protection orders to further enhance and improve their efficacy and accessibility.

Sponsors: Representatives Goodman, Davis, Taylor and Kloba.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/19/22, 1/28/22 [DPS].

Brief Summary of Substitute Bill

- Revises provisions governing court jurisdiction over civil protection order proceedings.
- Includes coercive control within the definition of domestic violence and defines the term.
- Revises procedures and standards for filing and service of protection order petitions and orders.
- Makes changes to aspects of the protection order hearing process.
- Modifies standards and procedures for entry of protection orders and relief that may be granted.
- Addresses violations and enforcement by specifying required court appearances following an arrest or criminal charge, and revises the types of orders included under the offense of unlawful possession of a firearm.
- Revises provisions governing modification or termination to address adding a new child to an order and who may file a petition for

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

modification or termination of a vulnerable adult protection order.

- Requires the Gender and Justice Commission to include as part of its work on protection order laws consideration of a study on the impact of including coercive control, and specifies possible parameters for the study.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Hansen, Chair; Simmons, Vice Chair; Abbarno, Davis, Entenman, Goodman, Kirby, Orwall, Peterson, Thai, Valdez and Walen.

Minority Report: Do not pass. Signed by 4 members: Representatives Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Ybarra.

Minority Report: Without recommendation. Signed by 1 member: Representative Klippert.

Staff: Edie Adams (786-7180).

Background:

In 2021 the Legislature enacted Engrossed Second Substitute House Bill 1320 (E2SHB 1320), which established a new chapter of law to govern all types of protection orders, including domestic violence protection orders (DVPOs), sexual assault protection orders (SAPOs), stalking protection orders (Stalking POs), anti-harassment protection orders (AHPOs), vulnerable adult protection orders (VAPOs), and extreme risk protection orders (ERPOs).

This new chapter consolidated and harmonized former laws governing protection orders to provide more uniformity in the rules and procedures that govern protection order petitions and proceedings, including in the areas of: filing and service of petitions; conduct of hearings; available remedies; and modification, termination, and enforcement of protection orders. In addition, a number of new provisions governing protection orders were established to update the law, including authorizing electronic filing and electronic service, and allowing protection order hearings to be conducted remotely according to specified procedures.

The E2SHB 1320 retained the existing differing approaches to the subject matter jurisdiction of superior courts and courts of limited jurisdiction to hear protection order proceedings, but directed the Administrative Office of the Courts (AOC), through the

Gender and Justice Commission (Commission), to study and make recommendations on whether jurisdiction should be harmonized, modified, or consolidated. In addition, the Commission was tasked with making recommendations to the Legislature on additional topics, including how protection order law can more effectively address the type of abuse known as "coercive control."

With respect to court jurisdiction, the Commission's recommendations include:

- Harmonize the circumstances that require transfer of cases to the superior court for DVPOs, SAPOs, Stalking POs, and AHPOs, and improve the transfer process to create more uniformity and clarity.
- Permit direct filing of petitions in superior court where circumstances are alleged that would ultimately require a transfer.
- Evaluate the existing jurisdiction of municipal courts in light of constitutional concerns.

With respect to the question of how to more effectively address "coercive control," the Commission provided the following recommendations:

- Include "coercive control" in the definition of domestic violence under the civil protection order laws.
- Define "coercive control" with elements that include: specific examples of tactics and abusive behaviors that are coercive and controlling; and limiting principles to distinguish the conduct from self-protective or defensive tactics or situational conflict.
- Include coercive control as a subject on which judicial officers should receive training, and allocate funding for the AOC to develop evidence-based training and resources for judicial officers on coercive control.

Summary of Substitute Bill:

The laws governing civil protection orders are amended to implement recommendations of the Commission relating to jurisdiction of courts over protection order proceedings and inclusion of coercive control in the definition of domestic violence. Numerous additional changes are made to provisions of the protection order law, including in areas relating to: filing and service of petitions; hearing procedures; issuance of orders, including duration and relief; violations and enforcement; and modification or termination of orders.

Definitions.

The definition of "intimate partner" is revised to provide that the term does not include persons who have a child in common where the child is conceived through sexual assault.

The definition of "domestic violence" is modified to include coercive control. "Coercive control" is defined to mean a pattern of behavior that is used to cause another to suffer physical, emotional, or psychological harm, and in purpose or effect unreasonably interferes

with a person's free will and personal liberty. In determining whether the interference is unreasonable, the court must consider the context and impact of the pattern of behavior from the perspective of a similarly situated person.

Examples of coercive control include, but are not limited to, engaging in any of the following:

- intimidation or controlling or compelling conduct by:
 - damaging, destroying, or threatening to damage or destroy, or forcing the other party to relinquish, goods, property, or items of special value;
 - using technology to threaten, humiliate, harass, stalk, intimidate, exert undue influence over, or abuse the other party, including by engaging in cyberstalking, monitoring, surveillance, impersonation, manipulation of electronic media, or distribution of or threats to distribute actual or fabricated intimate images;
 - driving recklessly with the other party or minor children in the vehicle;
 - communicating, directly or indirectly, intent to:
 - harm the other party's children, family members, friends, or pets, including by use of physical forms of violence;
 - harm the other party's career;
 - attempt suicide or other acts of self-harm; or
 - contact local or federal agencies based on actual or suspected immigration status;
 - exerting control over the other party's identity documents;
 - making, or threatening to make, private information public, including the other party's sexual orientation or gender identity, medical or behavioral health information, or other confidential information that jeopardizes safety; or
 - engaging in sexual or reproductive coercion;
- causing dependence, confinement, or isolation of the other party from friends, relatives, or other sources of support, including schooling and employment, or subjecting the other party to physical confinement or restraint;
- depriving the other party of basic necessities or committing other forms of financial exploitation;
- controlling, exerting undue influence over, interfering with, regulating, or monitoring the other party's movements, communications, daily behavior, finances, economic resources, or employment, including but not limited to interference with or attempting to limit access to services for children of the other party, such as health care, medication, child care, or school-based extracurricular activities;
- engaging in vexatious litigation or abusive litigation as defined in RCW 26.51.020 against the other party to harass, coerce, or control the other party, to diminish or exhaust the other party's financial resources, or to compromise the other party's employment or housing; or
- engaging in psychological aggression, including by inflicting fear, humiliating, degrading, or punishing the other party.

"Coercive control" does not include protective actions taken by a party in good faith for the legitimate and lawful purpose of protecting themselves or children from the risk of harm posed by the other party.

Jurisdiction.

Jurisdiction over protection order proceedings is harmonized for DVPOs, SAPOs, Stalking POs, and AHPOs. The superior and district courts have jurisdiction over these proceedings, except that such proceedings must be transferred from district court to superior court under the following circumstances:

- a superior court has exercised or is exercising jurisdiction over a proceeding involving the parties;
- the action would have the effect of interfering with a respondent's care, control, or custody of the respondent's minor child;
- the action would affect the use or enjoyment of real property for which the respondent has a cognizable claim or would exclude a party from a shared dwelling;
- the petitioner, victim, or respondent to the petition is under 18 years of age; or
- the district court is unable to verify whether there are potentially conflicting or related orders involving the parties.

When the district court transfers a case to the superior court, it must indicate in the transfer order the circumstances and finding supporting the transfer. When a case is transferred to superior court and the notice and order are not served on the respondent in time for the full hearing, the superior court must determine whether to grant any request for a continuance.

Courts must make publicly available in print and online information about their transfer procedures, court calendars, and judicial officer assignment. Transfer procedures, court calendars, and judicial officer assignment must further specifically listed goals of the chapter governing protection orders.

Provisions granting jurisdiction over protection order proceedings to municipal courts are removed.

Filing.

When a petition meets the criteria for a different type of protection order other than the one sought, the court must consider the petitioner's preference, and enter a temporary protection order or set the matter for a hearing as appropriate under the law. The court's decision on the appropriate type of order must not be based on alleviating potential stigma on the respondent.

In an ex parte DVPO, there is a rebuttable presumption that the court include the petitioner's minor children as protected parties unless there is good cause not to include the minor children. The court must make written findings for a decision to not include the minor children pending the full hearing.

Protection order petitions and supporting documents that are submitted after business hours must be processed as soon as possible on the next judicial day.

Court systems that allow a petitioner to track the progress of a case must include notification of when the respondent has filed a motion for the release of surrendered firearms.

A filing fee may not be charged for an AHPO when the petitioner is seeking the order against a person who has engaged in a hate crime or a single act of violence or threat of violence that meets specified criteria.

The requirement that minor children must only be referred to in the petition and filed documents by their initials and date of birth is removed. If a petition for any type of protection order is filed by an interested person, the affidavit or declaration must include a statement of why the petitioner qualifies as an interested person.

References to "electronic filing system" and "filing" are replaced with "electronic submission system" and "submission." The requirement that clerks must make all electronically filed court documents available for electronic access by judicial officers is removed. Instead, clerks must make available electronically to judicial officers any protection orders filed within the state. The requirement that clerks obtain community resource lists and translate them into the languages spoken by the top five non-English-speaking populations is removed. Instead, clerks must accept and provide community resource lists and accept translations of the lists from the programs that provided them.

The timeline by which the AOC must complete specified tasks, including development of a single petition form and preparation of instructional brochures and a protection order handbook, is delayed until December 30, 2022.

Service.

A petition for a VAPO that is filed by someone other than the vulnerable adult is added to the types of orders that require personal service. In cases where personal service is required, after two unsuccessful attempts, service must be permitted by electronic means.

Court authorization permitting electronic service is generally not required. However, in cases where personal service is required (other than VAPO cases), either request of the petitioner, or good cause for granting an order for electronic service, are required to authorize service by electronic means. No formal motion is necessary.

Service by mail is permitted when: personal service was required, there have been two unsuccessful attempts at personal service, and electronic service is not possible; or personal service is not required and there have been two unsuccessful attempts at personal or electronic service. If service by mail is provided by a third party, the clerk must forward proof of service to the law enforcement agency in the county or municipality where the

respondent resides.

Service is completed on the day the respondent is served personally, on the date of transmission for electronic service, on the tenth calendar day after mailing for service by mail, or on the date of the third publication when publication has been made for three consecutive weeks for service by publication.

Where electronic service is not completed because there was no verification of notice, and service by mail or publication has been authorized, copies must also be sent by electronic means to any known electronic addresses.

For ERPOs and protection orders that include an order to surrender weapons, if the order is entered in open court and the respondent appears in person, the respondent must be provided a copy and further service is not required. If the respondent appears remotely, or leaves the hearing before a final ruling is issued or order signed, and the court believes the respondent has sufficient notice, the order must recite that the respondent appeared before the court, has actual notice of the order, the necessity for further service is waived, and proof of service of the order is not necessary.

If known, a petitioner must provide on the confidential information form the respondent's email address, number for text messaging, and identification on social media applications and other technologies, and must attest that they are the legitimate, current, or last known contact information for the respondent.

The clerk must include the confidential information form when forwarding the order to the law enforcement agency in the county or municipality where the respondent resides for service. If the respondent has moved from that county or municipality and personal service is not required, the law enforcement agency specified in the order may serve the order.

Hearings.

Hearings may be conducted upon the information provided in the petition, live testimony of the parties if they choose to testify, and any additional sworn declarations.

Where a court resets a hearing date and reissues a temporary protection order, the hearing date must be reset no later than 14 days from the reissue date, except if the court permits service by mail or by publication, the court must reset the hearing date not later than 30 days from the date of the order authorizing such service. These time frames may be extended for good cause.

In considering a request for a continuance, courts should consider the rebuttable presumption against delay and the goal of providing victims quick and effective relief. Where a hearing is continued, any reissued temporary order may include orders to surrender and prohibit weapons issued with or without notice.

If an ex parte temporary protection order is denied, the court must set a full hearing unless the court determines the petition does not contain prima facie allegations to support the issuance of any type of protection order. If the court does not set a full hearing, the petitioner may file an amended petition within 14 days of the court's denial. The court may dismiss the petition if it determines the amended petition does not contain prima facie allegations to support the issuance of any type of protection order or if the petitioner fails to file an amended petition within the required time.

Orders, Duration, Relief, and Remedies.

A court may grant an ex parte temporary protection order where it appears that immediate serious harm, in addition to irreparable injury, could result if an order is not issued immediately.

In an AHPO proceeding, the court may order the following relief only as part of a full protection order: excluding the respondent from the residence shared by the parties; making residential provisions with regard to minor children of the parties; and providing financial relief and restraining transfer of jointly owned assets.

Where a court orders law enforcement assistance in the execution of a protection order, any appropriate law enforcement agency should act where assistance is needed, even if not specifically named in the order, including assisting with the recovery of firearms.

When the respondent is ordered to vacate the residence or shared property, the court may permit the respondent to remove personal clothing, personal items needed during the duration of the order, and any other items specified by the court, while a law enforcement officer is present.

For ERPOs and protection orders that include an order to surrender weapons, the respondent must immediately surrender all firearms and any concealed pistol license not previously surrendered to a local law enforcement agency on the day of the hearing at which the respondent was present in person or remotely. If the respondent is in custody, arrangements to recover the firearms must be made prior to release. Any firearms surrendered under an ERPO must be handled and stored properly to prevent damage or degradation, and the condition of the firearms documented, including by digital photograph.

Violations and Enforcement.

Existing provisions regarding required appearances for persons arrested or charged with AHPOs are extended to all protection orders. A defendant arrested for violating a protection order must appear in person before a magistrate within one judicial day after the arrest. At the time of appearance, the court must determine the necessity of imposing a no-contact order or other conditions of pretrial release. A defendant charged by citation, complaint, or information with violating a protection order and not arrested must appear in court for arraignment as soon as practicable, but no later than 14 days after the next day on which the court is in session following the citation, filing, or information.

The crime of Unlawful Possession of a Firearm in the second degree is amended to prohibit possession of a firearm based on a conviction for violating the restraint provisions of any type of protection order when committed by one family or household member against another or one intimate partner against another, committed on or after the effective date of the act. In addition, where the crime is based on the commission of a predicate offense committed by one family or household member or intimate partner against another, those terms have the meaning that applied when the crime was committed.

Modification or Termination.

A protected person who has a child or adopts a child after the protection order was issued but before the order expires may seek to include the child in the order on an ex parte basis only if the child is already in the physical custody of the petitioner. If the restrained person is the legal or biological parent of the child, a hearing must be set and notice given to the restrained person prior to final modification of the full protection order.

A motion to modify or terminate a VAPO may be brought by a vulnerable adult who is not subject to an order under the Uniform Guardianship Act (UGA). Where a vulnerable adult is subject to an order under the UGA, the vulnerable adult, or the vulnerable adult's guardian, conservator, or person acting on behalf of the vulnerable adult under a protective arrangement, may file a petition for modification or termination if that is within the person's authority under the guardianship, conservatorship, or protective arrangement.

Other.

Training for judicial officers should be evidence-based, and should include training on coercive control.

The Commission is directed to include as part of its work on protection order laws consideration of a study on the impact of the inclusion of coercive control. Potential parameters for the study are provided, as are measurements that may be included if empirically useful and readily measurable through available data. At the conclusion of the study, a report to the Legislature will be provided. By July 1, 2022, the Commission must advise the chairs of the relevant policy committees of the Legislature of its recommendations regarding need, timing, and design for such a study.

Provisions requiring studies and reports to the Legislature are repealed or expired once those duties are accomplished. Technical amendments are made to correct statutory citations.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes:

- revises the definition of coercive control to specify that the pattern of behavior must be an "unreasonable" interference with a person's free will and personal liberty, and

- that the court must consider the context and impact of the pattern of behavior from the perspective of a similarly situated person;
- removes "cleaning, accessing, displaying, using, or wearing a firearm in an intimidating or threatening manner" as an example of coercive control, and rewords provisions relating to threatening certain behavior and engaging in psychological aggression;
 - provides that service by mail is complete 10 (rather than 14) days after mailing;
 - provides that there is a rebuttable presumption that the court include (rather than the court shall include) the petitioner's minor children as protected parties in an ex parte temporary DVPO absent good cause;
 - changes the standard for issuance of an ex parte temporary protection order to "immediate serious harm or irreparable injury could result;"
 - removes a specific statement that the court may not order the petitioner to pay the respondent's attorneys' fees or other costs, which is covered under another statute;
 - provides that any firearms surrendered under an ERPO must be handled and stored properly to prevent damage or degradation, and the condition of the firearms documented, including by digital photograph;
 - requires the Commission to include as part of its work on protection order laws consideration of a study on the impact of inclusion of coercive control, and specifies possible parameters for the study;
 - amends Unlawful Possession of a Firearm to: (1) provide that where the crime is based on the commission of a predicate offense committed by one family or household member or intimate partner against another, those terms have the meaning that applied when the crime was committed; and (2) indicate that the crime only applies to violations of orders under the new protection order law committed on or after the effective date of the act; and
 - changes two references to "filed" petitions to instead refer to "submitted" petitions.

Appropriation: None.

Fiscal Note: Requested on January 11, 2022. New fiscal note requested on January 29, 2022.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 9 through 13, relating to service requirements and hearing procedures, and section 34, relating to amendments to prior effective dates, which take effect immediately.

Staff Summary of Public Testimony:

(In support) Most of the bill refines and clarifies last session's comprehensive protection order law based on statewide input from a wide variety of stakeholders. The important policy change is the inclusion of coercive control in the definition of domestic violence.

Coercive control is used to cause another person to suffer physical, emotional, and psychological harm. It refers to the totality of abuse that survivors experience rather than focusing solely on physical abuse. Abusers often do not need to resort to physical violence when they already control their partners' lives in other ways. Coercive control can take many forms, and technology has greatly expanded the ability of abusers to engage in relentless harassment, intimidation, and surveillance that make the abuse omnipresent. Coercive control targets a survivor's identity, independence, liberty, social supports, and dignity in ways that compromise their capacity to resist abuse and escape. Adding coercive control is more reflective of the full scope of abuse survivors face on a daily basis.

The current inclusion of harassment and stalking in domestic violence does not capture the full range of abuses typical of coercive control. Judges are reluctant to consider evidence of behaviors that are not physical violence, and this has resulted in survivors being wrongly discredited and denied needed protection. Coercive control is the most expansive means of abuse, and the law fails to recognize its significance. Acknowledging that coercive control is domestic violence will help educate police, court, and government officials so this type of abuse can be treated with the severity it deserves.

The protection order process was greatly improved with the legislation enacted last session. This bill further improves the process, especially the process allowing electronic service, which will help survivors to move forward with their cases so that they can move forward with their lives.

Many are concerned that including coercive control could be used by abusers against survivors, but abusers already try to use the system against their victims. The response is not to limit the tools available to survivors, but to acknowledge what is occurring and train those within the system to better understand and recognize coercive control.

It is imperative that funding be provided so that all judicial officers are given high quality and regular training on the dynamics of domestic violence and coercive control to ensure consistency of judicial decision-making.

A judicial finding of coercive conduct needs to be based on evidence of a pattern of objective, unreasonable behavior. This will ensure the court can distinguish between abusive conduct and conduct that is instead self-protective, defensive, or situational. Some of the terms in the examples of coercive control may be void for vagueness, and these terms as well as some other language in the definition could create an opening for perpetrators to go on the offensive against their victims.

(Opposed) None.

(Other) There is no doubt that coercive control is a part of domestic violence and needs to be addressed. Concerns with making this change relate to uniform implementation,

potential misuse by abusers, and separation of powers, which limits the Legislature from mandating judicial training. The impact of including coercive control should be studied, including a look at cross petitions, effect on family law cases, and consistency of judicial training. An increase in funding for advocate training is needed because domestic violence programs are already struggling.

Much of this bill can be supported, but there are concerns with some provisions. Definitions of some terms are vague and overbroad in potential application. There are also possible First Amendment issues relating to inclusion of reporting of what are crimes in the immigration realm. Additional concerns relate to limiting live testimony and service of process, particularly electronic service, in terms of blocking and spoofing.

The bill needs to address issues created by the law enacted last session. Currently only violations of certain protection orders will result in loss of firearm rights, and that is expanded without any notice to the individuals who may be impacted. The definitions of family or household member and intimate partner have been expanded to include juveniles, so there are people who will now lose firearm rights based on past juvenile offenses without ever having received notice. There are now two different definitions in the law for both family or household member and intimate partner and that is confusing and should be harmonized.

Persons Testifying: (In support) Representative Roger Goodman, prime sponsor; Ruth Gordon; Jennie Laird, Superior Court Judges' Association; Dana Cuomo, Lafayette University; Grace Huang, Asia-Pacific Institute on Gender-Based Violence and Washington State Women's Commission; Judy Lin, King County Bar Association; Abbas Rizvi, Northwest Justice Project; Leah Griffin; Megan Roake; Michelle Osborne; Kayleigh McNiel; Riddhi Mukhopadhyay, Sexual Violence Law Center; Sandra Shanahan, King County Prosecuting Attorney's Regional Domestic Violence Firearms Enforcement Unit; Ailise Delany; Amanda Canales; Brenda Wiest; and Patrick Rawnsley, Washington State Bar Association Family Law Executive Committee.

(Other) Lisa Brewer, Domestic Relations Attorneys of Washington; Vitaliy Kertchen, Washington Association of Criminal Defense Lawyers and Washington Defender Association; and Amber Barcel, Washington State Coalition Against Domestic Violence.

Persons Signed In To Testify But Not Testifying: None.