

# FINAL BILL REPORT

## SHB 1901

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Synopsis as Enacted

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

**Sponsors:** House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Goodman, Davis, Taylor and Kloba).

**House Committee on Civil Rights & Judiciary**  
**Senate Committee on Law & Justice**  
**Senate Committee on Ways & Means**

### **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

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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 part of the legislation nor does it constitute a statement of legislative intent.*

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." The Commission's report included recommendations to harmonize jurisdictional provisions for DVPOs, SAPOs, Stalking POs, and AHPOs, and to include "coercive control" in the definition of domestic violence under the civil protection order laws.

### **Summary:**

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 in areas relating to: filing and service of petitions; hearing procedures; issuance of orders; 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. Numerous examples of conduct and behavior that constitute coercive control are provided. "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.

Procedures and requirements relating to transfer of cases to superior court are provided. 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. 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 and translate community resource lists is removed. Instead, clerks must accept and provide community resource lists and accept translations of the lists from the programs that provided them.

#### 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. When 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 electronic service. 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 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 and has actual notice of the order, the necessity for further service is waived, and proof of service 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. Persons authorized to participate in protection order proceedings may participate remotely in the proceedings.

Where a court resets a hearing date and reissues a temporary protection order, the hearing date must be no later than 14 days from the reissue date, except if the court permits service by mail or by publication, the hearing must be reset no later than 30 days from the date of the order authorizing such service. These time frames may be extended for good cause.

If an ex parte temporary protection order is denied, the court must set a full hearing unless 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 case if 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. 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. The required components of protection orders that disqualify a person from possessing firearms is revised to provide that the protection must contain either, rather than both, of the following: (a) a finding that the person represents a credible threat to the protected person or child; or (b) an explicit prohibition on the use, attempted use, or threatened use of physical force against the protected person or child.

#### Modification or Termination.

A protected person who has a child or adopts a child after the protection order was issued may seek to include the child in the order on an ex parte basis only if the child is in the petitioner's physical custody. 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.

Information that must be available to judicial officers when making decisions regarding protection orders may be made available in alternative databases other than the Judicial Information System. Summary information for protection orders provided by military and tribal courts must be included in the database. Information in the database must be easily accessible and accurately updated, and a document viewing system must be available so that the court is able to view any protection order filed within the state.

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

The Commission is directed to consider a study on the impact of including coercive control

in the definition of domestic violence, and potential parameters for the study are 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.

The Public Records Act is amended to allow release of concealed pistol license applications and information to specified persons and entities for the purpose of assisting courts in ensuring compliance with ERPOs and orders to surrender and prohibit weapons.

**Votes on Final Passage:**

House	71	25	
Senate	30	17	(Senate amended)
House	57	40	(House concurred)

**Effective:** July 1, 2022

March 31, 2022 (Sections 9–14 and 47)

July 1, 2023 (Section 37)