

SENATE BILL REPORT

SHB 2745

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, FEBRUARY 25, 1992

Brief Description: Changing provisions relating to orders for protection and antiharassment orders.

SPONSORS: House Committee on Judiciary (originally sponsored by Representatives H. Myers, Belcher, Forner, Brough, Mitchell, Ogden, Appelwick, Morris, Riley, Ludwig, Paris, Wineberry, Winsley, Scott, Wood, Ferguson, Hochstatter, Sheldon, J. Kohl and Brekke)

HOUSE COMMITTEE ON JUDICIARY

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Nelson, Chairman; Thorsness, Vice Chairman; Erwin, M. Kreidler, Madsen, and Rasmussen.

Staff: Lidia Mori (786-7755)

Hearing Dates: February 25, 1992

BACKGROUND:

The Domestic Violence Protection Act allows a person who alleges that he or she is a victim of domestic violence to petition the court for a protection order. The act contains detailed procedural requirements for issuing the orders.

Upon receipt of the petition, the court must order a hearing to be held within 14 days. The respondent must be personally served with notice of the hearing five days prior to the hearing. Pending the hearing, the court may issue a temporary ex parte order of protection. If the respondent is not served on time, the court may reset the hearing and renew the ex parte order of protection for another 14 days. This process may be repeated a number of times if personal service cannot be made on the respondent.

After a hearing, the court may grant a protection order for a period not to exceed one year. The petitioner must initiate the process again if the petitioner wants continued protection after the one-year order expires.

The court may require the respondent to pay the filing fee, court costs, service fees, and other costs, including reasonable attorney fees.

Law enforcement must retain the order in their computer based information system for one year.

Very similar procedures exist under the Antiharassment Act. That act allows a petitioner who is being harassed by someone who is not a "family or household member" to seek a protection order. That act does not provide for award of costs and attorney fees.

SUMMARY:

The Domestic Violence Protection Act and the Antiharassment Act are amended to provide, under certain circumstances, for service of process by publication, entry of a permanent protection order or orders that last longer than one year, and award of costs and attorney fees in antiharassment cases.

Service of process by publication. If personal service has not been made on the respondent, the court must reset the hearing, may reissue the ex parte protection order, and must either order further attempts at personal service or allow service by publication.

The court may order service by publication if: 1) the server files an affidavit stating the server was unable to complete personal service. The affidavit must describe the number and types of attempts the server made to complete service; 2) the petitioner files an affidavit stating the petitioner believes the respondent is hiding to avoid service. The petitioner must explain the reasons for that belief; 3) the server has deposited a copy of the summons, notice of hearing, and ex parte order of protection in the post office directed to the respondent's last known address; and 4) the court finds reasonable grounds exist to believe the respondent is concealing himself or herself to avoid service and that further attempts to personally serve the respondent will be unduly burdensome or futile.

The publication must run once a week for three weeks in one of the three most widely circulated newspapers in the county of the respondent's last known address and in the county where the hearing will be held. The publication must contain the summons, signed by the petitioner, a brief statement of the reason for the petition and a summary of the provisions under the ex-parte order. Service is considered complete upon expiration of the three weeks. The court must reset the hearing for 24 days from the date of issuing the ex parte order and order permitting service by publication. The petitioner must pay for the costs of publication unless the county legislative authority authorizes funds for that purpose.

Permanent order of protection. The court may issue a permanent protection order or a protection order for longer than one year if the court finds the respondent is likely to resume acts of domestic violence against the petitioner or the petitioner's family or household members upon expiration of a one-year order. The court may not issue an order of protection for longer than one year if the order prohibits contact with the respondent's minor children.

The court must specify in the order for protection whether the order was granted after personal service or service by publication and whether the final order was ordered served by publication or served personally. Law enforcement must put the information about how service of process was obtained into the computer system so that they know whether service was by publication or personal service. The court must advise the petitioner that if service of process is obtained by publication, the respondent will not be subject to criminal and contempt sanctions unless the respondent "knows of the order." When the police investigate a report of a violation of a no-contact order, the police must try to determine whether the respondent knew of the order. If the police think that the respondent did not know or probably did not know of the order, the officer must make a reasonable attempt to obtain a copy of the order and serve it on the respondent during the investigation.

Reissuance of a one-year order. If the court issues a one-year order and the petitioner applies for a renewal of the order, the court must grant the petition unless the respondent proves by a preponderance of the evidence that the respondent will not resume acts of domestic violence upon expiration of the order. The same rules regarding service of process apply to these provisions.

Antiharassment cases. Similar provisions are adopted in the antiharassment statute. The court may award costs and attorney fees to the petitioner in an antiharassment case.

Appropriation: none

Revenue: none

Fiscal Note: requested

TESTIMONY FOR:

It is very traumatizing for a person who wants to renew a protection order to have to convince a judge and possibly face the respondent every time the order expires. It is also financially costly. This bill would allow protection and civil antiharassment orders to be permanent in some cases.

TESTIMONY AGAINST: None

TESTIFIED: Representative Holly Myers (pro)