
HOUSE BILL 2745

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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

Read first time 01/27/92. Referred to Committee on Judiciary.

1 AN ACT Relating to court orders for protection; amending RCW
2 26.50.050, 26.50.060, 26.50.070, 26.50.090, 26.50.100, 10.14.070,
3 10.14.080, 10.14.090, 10.14.100, and 10.14.110; adding new sections to
4 chapter 26.50 RCW; and adding new sections to chapter 10.14 RCW.

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

6 **Sec. 1.** RCW 26.50.050 and 1984 c 263 s 6 are each amended to read
7 as follows:

8 Upon receipt of the petition, the court shall order a hearing which
9 shall be held not later than fourteen days from the date of the order.
10 Except as provided in section 4 of this act, personal service shall be
11 made upon the respondent not less than five court days prior to the
12 hearing. If timely personal service cannot be made, the court ((may))
13 shall set a new hearing date and shall either require additional
14 attempts at obtaining personal service or permit service by publication

1 as provided in section 4 of this act. The court shall issue an ex
2 parte order for protection pending the hearing as provided in RCW
3 26.50.070 and section 4 of this act.

4 **Sec. 2.** RCW 26.50.060 and 1989 c 411 s 1 are each amended to read
5 as follows:

6 (1) Upon notice and after hearing, the court may provide relief as
7 follows:

8 (a) Restrain a party from committing acts of domestic violence;

9 (b) Exclude the respondent from the dwelling which the parties
10 share or from the residence of the petitioner;

11 (c) On the same basis as is provided in chapter 26.09 RCW, the
12 court shall make residential provision with regard to minor children of
13 the parties. However, parenting plans as specified in chapter 26.09
14 RCW shall not be required under this chapter;

15 (d) Order the respondent to participate in treatment or counseling
16 services;

17 (e) Order other relief as it deems necessary for the protection of
18 a family or household member, including orders or directives to a peace
19 officer, as allowed under this chapter;

20 (f) Require the respondent to pay the filing fee and court costs,
21 including service fees, and to reimburse the petitioner for costs
22 incurred in bringing the original action or an uncontested action for
23 renewal of the protection order, including a reasonable attorney's fee.
24 If the petitioner has been granted leave to proceed in forma pauperis,
25 the court may require the respondent to pay the filing fee and costs,
26 including services fees, to the county or municipality incurring the
27 expense; and

1 (g) Restrain any party from having any contact with the victim of
2 domestic violence or the victim's children or members of the victim's
3 household.

4 (2) Any relief granted by the order for protection, other than a
5 judgment for costs, shall be for a fixed period not to exceed one year
6 if the restraining order restrains the respondent from contacting the
7 respondent's minor children. If the petitioner has petitioned for
8 relief on his or her own behalf or on behalf of the petitioner's family
9 or household members or minor children that are not also the
10 respondent's minor children, the court may either (a) grant relief for
11 a fixed period not to exceed one year; or (b) enter a permanent order
12 of protection, if the court finds that the respondent is likely to
13 resume acts of domestic violence against the petitioner or the
14 petitioner's family or household members or minor children when the
15 order expires.

16 If the petitioner has petitioned for relief on behalf of the
17 respondent's minor children, the court shall advise the petitioner that
18 if the petitioner wants to continue protection for a period beyond one
19 year the petitioner may either petition for renewal pursuant to the
20 provisions of this chapter or may seek relief pursuant to the
21 provisions of chapter 26.09 RCW.

22 (3) If the court grants a one year order, the petitioner may apply
23 for renewal of the order by filing a petition for renewal at any time
24 within the three months before the one year order expires. The
25 petition for renewal shall state the reasons why the petitioner seeks
26 to renew the protection order. Upon receipt of the petition for
27 renewal the court shall order a hearing which shall be not later than
28 fourteen days from the date of the order. Except as provided in
29 section 4 of this act, personal service shall be made on the respondent
30 not less than five days before the hearing. If timely service cannot

1 be made the court may set a new hearing date and shall either require
2 additional attempts at obtaining personal service or permit service by
3 publication as provided in section 4 of this act. If the one year
4 order expires because timely service cannot be made the court shall
5 grant an ex parte order of protection as provided in RCW 26.50.070.
6 The court shall grant the petition for renewal unless the respondent
7 proves by a preponderance of the evidence that the respondent will not
8 resume acts of domestic violence against the petitioner or the
9 petitioner's children or family or household members when the one year
10 order expires. The court shall renew the protection order for another
11 year or may enter a permanent order as provided in this section. The
12 court shall award court costs, service fees, and reasonable attorneys'
13 fees to the prevailing petitioner if the respondent contests the
14 petition for renewal.

15 (4) In providing relief under this chapter, the court may realign
16 the designation of the parties as "petitioner" and "respondent" where
17 the court finds that the original petitioner is the abuser and the
18 original respondent is the victim of domestic violence.

19 **Sec. 3.** RCW 26.50.070 and 1989 c 411 s 2 are each amended to read
20 as follows:

21 (1) Where an application under this section alleges that
22 irreparable injury could result from domestic violence if an order is
23 not issued immediately without prior notice to the respondent, the
24 court ((may)) shall grant an ex parte temporary order for protection,
25 pending a full hearing, and grant relief as the court deems proper,
26 including an order:

27 (a) Restraining any party from committing acts of domestic
28 violence;

1 (b) Excluding any party from the dwelling shared or from the
2 residence of the other until further order of the court;

3 (c) Restraining any party from interfering with the other's custody
4 of the minor children or from removing the children from the
5 jurisdiction of the court; and

6 (d) Restraining any party from having any contact with the victim
7 of domestic violence or the victim's children or members of the
8 victim's household.

9 (2) Irreparable injury under this section includes but is not
10 limited to situations in which the respondent has recently threatened
11 petitioner with bodily injury or has engaged in acts of domestic
12 violence against the petitioner.

13 (3) The court shall hold an ex parte hearing in person or by
14 telephone on the day the petition is filed or on the following judicial
15 day.

16 (4) An ex parte temporary order for protection shall be effective
17 for a fixed period not to exceed fourteen days, but may be reissued.
18 A full hearing, as provided in this chapter, shall be set for not later
19 than fourteen days from the issuance of the temporary order. Except as
20 provided in RCW 26.50.050 and section 4 of this act, the respondent
21 shall be personally served with a copy of the ex parte order along with
22 a copy of the petition and notice of the date set for the hearing.

23 NEW SECTION. Sec. 4. A new section is added to chapter 26.50 RCW
24 to read as follows:

25 (1) If the respondent was not personally served with the petition,
26 notice of hearing, and ex parte order before the hearing, the court
27 shall reset the hearing for fourteen days from the date of entry of the
28 order and order service by publication instead of personal service
29 under the following circumstances:

1 (a) The sheriff or municipal officer files an affidavit stating
2 that the officer was unable to complete personal service upon the
3 respondent. The affidavit must describe the number and types of
4 attempts the officer made to complete service;

5 (b) The petitioner files an affidavit stating that the petitioner
6 believes that the respondent is hiding from the server to avoid
7 service. The petitioner's affidavit must state the reasons for the
8 belief that the petitioner is avoiding service;

9 (c) The server has deposited a copy of the summons, in
10 substantially the form prescribed in subsection (3) of this section,
11 notice of hearing, and the ex parte order of protection in the post
12 office, directed to the respondent at the respondent's last known
13 address, unless the server states that the server does not know the
14 respondent's address; and

15 (d) The court finds reasonable grounds exist to believe that the
16 respondent is concealing himself or herself to avoid service, and that
17 further attempts to personally serve the respondent would be futile or
18 unduly burdensome.

19 (2) The court shall reissue the temporary order of protection not
20 to exceed another fourteen days from the date of reissuing the ex parte
21 protection order and order to provide service by publication.

22 (3) The publication shall be made in a newspaper of general
23 circulation in the county where the petition was brought and in the
24 county of the last known address of the respondent once a week for two
25 consecutive weeks. The publication of summons shall not be made until
26 the court orders service by publication under this section. Service of
27 the summons shall be considered complete at the expiration of the
28 fourteen days. The summons must be signed by the petitioner. The
29 summons shall contain the date of the first publication, and shall
30 require the respondent upon whom service by publication is desired, to

1 appear and answer the petition within fourteen days from the date of
2 the first publication of the summons. The summons shall also contain
3 a brief statement of the reason for the petition and a summary of the
4 provisions under the ex parte order. The summons shall be essentially
5 in the following form:

6 In the court of the state of Washington for the
7 county of

8, Petitioner
9 vs. No.
10, Respondent

11 The state of Washington to (respondent):

12 You are hereby summoned to appear within fourteen days after the
13 date of the first publication of this summons, that is, within fourteen
14 days after the day of, 19...., and respond to the
15 petition. If you fail to respond, an order of protection will be
16 issued against you pursuant to the provisions of the domestic violence
17 protection act, chapter 26.50 RCW, for a minimum of one year from the
18 date you are required to appear. The court may issue a permanent
19 restraining order against you as provided in RCW 26.50.060. A
20 temporary order of protection has been issued against you, restraining
21 you from the following: (Insert a brief statement of the provisions of
22 the ex parte order). A copy of the petition, notice of hearing, and ex
23 parte order has been filed with the clerk of this court.

24
25 Petitioner

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 26.50 RCW
2 to read as follows:

3 Following completion of service by publication as provided in
4 section 4 of this act, if the respondent fails to appear at the
5 hearing, the court may issue an order of protection for a period of one
6 year from the date of the hearing or may issue a permanent order of
7 protection as provided in RCW 26.50.060. That order must be served
8 pursuant to RCW 26.50.090, and forwarded to the appropriate law
9 enforcement agency pursuant to RCW 26.50.100.

10 **Sec. 6.** RCW 26.50.090 and 1985 c 303 s 6 are each amended to read
11 as follows:

12 (1) An order issued under this chapter shall be personally served
13 upon the respondent, except as provided in subsections (6) and (8) of
14 this section.

15 (2) The sheriff of the county or the peace officers of the
16 municipality in which the respondent resides shall serve the respondent
17 personally unless the petitioner elects to have the respondent served
18 by a private party.

19 (3) If service by a sheriff or municipal peace officer is to be
20 used, the clerk of the court shall have a copy of any order issued
21 under this chapter forwarded on or before the next judicial day to the
22 appropriate law enforcement agency specified in the order for service
23 upon the respondent. Service of an order issued under this chapter
24 shall take precedence over the service of other documents unless they
25 are of a similar emergency nature.

26 (4) If the sheriff or municipal peace officer cannot complete
27 service upon the respondent within ten days, the sheriff or municipal
28 peace officer shall notify the petitioner. The petitioner shall
29 provide information sufficient to permit notification.

1 (5) Returns of service under this chapter shall be made in
2 accordance with the applicable court rules.

3 (6) If an order entered by the court recites that the respondent
4 appeared in person before the court, the necessity for further service
5 is waived and proof of service of that order is not necessary.

6 (7) Except in cases where the petitioner is granted leave to
7 proceed in forma pauperis, municipal police departments serving
8 documents as required under this chapter may collect the same fees for
9 service and mileage authorized by RCW 36.18.040 to be collected by
10 sheriffs.

11 (8) If the court previously entered an order allowing service by
12 publication of the notice of hearing and temporary order of protection
13 pursuant to section 4 of this act, the court may permit service by
14 publication of the one year or permanent order of protection according
15 to the requirements of section 4 of this act.

16 **Sec. 7.** RCW 26.50.100 and 1984 c 263 s 11 are each amended to read
17 as follows:

18 A copy of an order for protection granted under this chapter shall
19 be forwarded by the clerk of the court on or before the next judicial
20 day to the appropriate law enforcement agency specified in the order.

21 Upon receipt of the order, the law enforcement agency shall
22 forthwith enter the order (~~((for one year))~~) into any computer-based
23 criminal intelligence information system available in this state used
24 by law enforcement agencies to list outstanding warrants. The law
25 enforcement agency shall expunge expired orders from the computer
26 system. Entry into the law enforcement information system constitutes
27 notice to all law enforcement agencies of the existence of the order.
28 The order is fully enforceable in any county in the state.

1 **Sec. 8.** RCW 10.14.070 and 1987 c 280 s 7 are each amended to read
2 as follows:

3 Upon receipt of the petition, the court shall order a hearing which
4 shall be held not later than fourteen days from the date of the order.
5 Except as provided in section 10 of this act, personal service shall be
6 made upon the respondent not less than five court days before the
7 hearing. If timely personal service cannot be made, the court ((may))
8 shall set a new hearing date and shall either require additional
9 attempts at obtaining personal service or permit service by publication
10 as provided by section 10 of this act. The court shall issue an ex
11 parte order for protection pending the hearing as provided in RCW
12 10.14.080 and section 10 of this act.

13 **Sec. 9.** RCW 10.14.080 and 1987 c 280 s 8 are each amended to read
14 as follows:

15 (1) Upon filing a petition for a civil antiharassment protection
16 order under this chapter, the petitioner may obtain an ex parte
17 temporary antiharassment protection order. An ex parte temporary
18 antiharassment protection order ((may)) shall be granted with or
19 without notice upon the filing of an affidavit which, to the
20 satisfaction of the court, shows reasonable proof of unlawful
21 harassment of the petitioner by the respondent and that great or
22 irreparable harm will result to the petitioner if the temporary
23 antiharassment protection order is not granted.

24 (2) An ex parte temporary antiharassment protection order shall be
25 effective for a fixed period not to exceed fourteen days, but may be
26 reissued. A full hearing, as provided in this chapter, shall be set
27 for not later than fourteen days from the issuance of the temporary
28 order. Except as provided in RCW 10.14.070 and section 10 of this act,
29 the respondent shall be personally served with a copy of the ex parte

1 order along with a copy of the petition and notice of the date set for
2 the hearing.

3 (3) At the hearing, if the court finds by a preponderance of the
4 evidence that unlawful harassment exists, a civil antiharassment
5 protection order shall issue prohibiting such unlawful harassment.

6 (4) An order issued under this chapter shall be effective for not
7 more than one year unless the court finds that the respondent is likely
8 to resume unlawful harassment of the petitioner when the order expires.
9 If so, the court may enter a permanent antiharassment protection order.
10 The court shall not enter an order that is effective for more than one
11 year if the order restrains the respondent from contacting the
12 respondent's minor children. If the petitioner seeks relief for a
13 period longer than one year on behalf of the respondent's minor
14 children, the court shall advise the petitioner that the petitioner may
15 apply for renewal of the order as provided in this chapter or if
16 appropriate may seek relief pursuant to chapter 26.09 or 26.10 RCW.

17 (5) At any time within the three months before the expiration of
18 the one year order, the petitioner may apply for a renewal of the order
19 by filing a ((new)) petition ((under this chapter)) for renewal. The
20 petition for renewal shall state the reasons why the petitioner seeks
21 to renew the protection order. Upon receipt of the petition for
22 renewal, the court shall order a hearing which shall be not later than
23 fourteen days from the date of the order. Except as provided in
24 section 10 of this act, personal service shall be made upon the
25 respondent not less than five days before the hearing. If timely
26 service cannot be made the court may set a new hearing date and shall
27 either require additional attempts at obtaining personal service or
28 permit service by publication as provided by section 10 of this act.
29 If the one year order expires because timely service cannot be made the
30 court shall grant an ex parte order of protection as provided in this

1 section. The court shall grant the petition for renewal unless the
2 respondent proves by a preponderance of the evidence that the
3 respondent will not resume harassment of the petitioner when the one
4 year order expires. The court shall renew the protection order for
5 another year or may enter a permanent order as provided in subsection
6 (4) of this section.

7 ~~((4))~~ (6) The court, in granting an ex parte temporary
8 antiharassment protection order or a civil antiharassment protection
9 order, shall have broad discretion to grant such relief as the court
10 deems proper, including an order:

11 (a) Restraining the respondent from making any attempts to contact
12 the petitioner;

13 (b) Restraining the respondent from making any attempts to keep the
14 petitioner under surveillance; and

15 (c) Requiring the respondent to stay a stated distance from the
16 petitioner's residence and workplace.

17 ~~((5))~~ (7) A petitioner may not obtain an ex parte temporary
18 antiharassment protection order against a respondent if the petitioner
19 has previously obtained two such ex parte orders against the same
20 respondent but has failed to obtain the issuance of a civil
21 antiharassment protection order unless good cause for such failure can
22 be shown.

23 NEW SECTION. Sec. 10. A new section is added to chapter 10.14 RCW
24 to read as follows:

25 (1) If the respondent was not personally served with the petition,
26 notice of hearing, and ex parte order before the hearing, the court
27 shall reset the hearing for fourteen days from the date of entry of the
28 order and order service by publication instead of personal service
29 under the following circumstances:

1 (a) The sheriff or municipal officer files an affidavit stating
2 that the officer was unable to complete personal service upon the
3 respondent. The affidavit must describe the number and types of
4 attempts the officer made to complete service;

5 (b) The petitioner files an affidavit stating that the petitioner
6 believes that the respondent is hiding from the server to avoid
7 service. The petitioner's affidavit must state the reasons for the
8 belief that the petitioner is avoiding service;

9 (c) The server has deposited a copy of the summons, in
10 substantially the form prescribed in subsection (3) of this section,
11 notice of hearing, and the ex parte order of protection in the post
12 office, directed to the respondent at the respondent's last known
13 address, unless the server states that the server does not know the
14 respondent's address; and

15 (d) The court finds reasonable grounds exist to believe that the
16 respondent is concealing himself or herself to avoid service, and that
17 further attempts to personally serve the respondent would be futile or
18 unduly burdensome.

19 (2) The court shall reissue the temporary order of protection not
20 to exceed another fourteen days from the date of reissuing the ex parte
21 protection order and order to provide service by publication.

22 (3) The publication shall be made in a newspaper of general
23 circulation in the county where the petition was brought and in the
24 county of the last known address of the respondent once a week for two
25 consecutive weeks. The publication of summons shall not be made until
26 the court orders service by publication under this section. Service of
27 the summons shall be considered complete at the expiration of the
28 fourteen days. The summons must be signed by the petitioner. The
29 summons shall contain the date of the first publication, and shall
30 require the respondent upon whom service by publication is desired, to

1 appear and answer the petition within fourteen days from the date of
2 the first publication of the summons. The summons shall also contain
3 a brief statement of the reason for the petition and a summary of the
4 provisions under the ex parte order. The summons shall be essentially
5 in the following form:

6 In the court of the state of Washington for the
7 county of

8, Petitioner
9 vs. No.
10, Respondent

11 The state of Washington to (respondent):

12 You are hereby summoned to appear within fourteen days after the
13 date of the first publication of this summons, that is, within fourteen
14 days after the day of, 19...., and respond to the
15 petition. If you fail to respond, an order of protection will be
16 issued against you pursuant to the provisions of chapter 10.14 RCW, for
17 a minimum of one year from the date you are required to appear. The
18 court may issue a permanent restraining order against you as provided
19 in RCW 10.14.080. A temporary order of protection has been issued
20 against you, restraining you from the following: (Insert a brief
21 statement of the provisions of the ex parte order). A copy of the
22 petition, notice of hearing, and ex parte order has been filed with the
23 clerk of this court.

24
25 Petitioner

1 NEW SECTION. **Sec. 11.** A new section is added to chapter 10.14 RCW
2 to read as follows:

3 Following completion of service by publication as provided in
4 section 10 of this act, if the respondent fails to appear at the
5 hearing, the court may issue an order of protection for a period of one
6 year from the date of the hearing or may issue a permanent order of
7 protection as provided in RCW 10.14.080. That order must be served
8 pursuant to RCW 10.14.100, and forwarded to the appropriate law
9 enforcement agency pursuant to RCW 10.14.110.

10 **Sec. 12.** RCW 10.14.090 and 1987 c 280 s 9 are each amended to read
11 as follows:

12 (1) Nothing in this chapter shall preclude either party from
13 representation by private counsel or from appearing on his or her own
14 behalf.

15 (2) The court may award court costs, including service fees, and
16 reasonable attorneys' fees to the prevailing petitioner upon granting
17 a permanent order, a one year order, or an uncontested renewal order.
18 The court shall award court costs, service fees, and reasonable
19 attorneys' fees to the prevailing petitioner if the respondent contests
20 the petition for renewal.

21 **Sec. 13.** RCW 10.14.100 and 1987 c 280 s 10 are each amended to
22 read as follows:

23 (1) An order issued under this chapter shall be personally served
24 upon the respondent, except as provided in subsections (5) and (7) of
25 this section.

26 (2) The sheriff of the county or the peace officers of the
27 municipality in which the respondent resides shall serve the respondent

1 personally unless the petitioner elects to have the respondent served
2 by a private party.

3 (3) If the sheriff or municipal peace officer cannot complete
4 service upon the respondent within ten days, the sheriff or municipal
5 peace officer shall notify the petitioner.

6 (4) Returns of service under this chapter shall be made in
7 accordance with the applicable court rules.

8 (5) If an order entered by the court recites that the respondent
9 appeared in person before the court, the necessity for further service
10 is waived and proof of service of that order is not necessary.

11 (6) Except in cases where the petitioner is granted leave to
12 proceed in forma pauperis, municipal police departments serving
13 documents as required under this chapter may collect the same fees for
14 service and mileage authorized by RCW 36.18.040 to be collected by
15 sheriffs.

16 (7) If the court previously entered an order allowing service by
17 publication of the notice of hearing and temporary order of protection
18 pursuant to section 10 of this act, the court may permit service by
19 publication of the one year or permanent order of protection according
20 to the requirements of section 10 of this act.

21 **Sec. 14.** RCW 10.14.110 and 1987 c 280 s 11 are each amended to
22 read as follows:

23 A copy of an antiharassment protection order granted under this
24 chapter shall be forwarded by the clerk of the court on or before the
25 next judicial day to the appropriate law enforcement agency specified
26 in the order.

27 Upon receipt of the order, the law enforcement agency shall
28 forthwith enter the order (~~for one year~~) into any computer-based
29 criminal intelligence information system available in this state used

1 by law enforcement agencies to list outstanding warrants. The law
2 enforcement agency shall expunge expired orders from the computer
3 system. Entry into the law enforcement information system constitutes
4 notice to all law enforcement agencies of the existence of the order.
5 The order is fully enforceable in any county in the state.

6 NEW SECTION. Sec. 15. A new section is added to chapter 26.50 RCW
7 to read as follows:

8 As an alternative to the fourteen-day time period for setting
9 hearings on petitions as provided in RCW 26.50.050, 26.50.070, and
10 section 4 of this act, the superior court or district court, by local
11 rule, may adopt a time period of twenty-one days for obtaining personal
12 service and setting hearings.

13 This section shall expire one year after the effective date of this
14 act.

15 NEW SECTION. Sec. 16. A new section is added to chapter 10.14 RCW
16 to read as follows:

17 As an alternative to the fourteen-day time period for setting
18 hearings on petitions as provided in RCW 10.14.070, 10.14.080, and
19 section 10 of this act, the superior court or district court, by local
20 rule, may adopt a time period of twenty-one days for obtaining personal
21 service and setting hearings.

22 This section shall expire one year after the effective date of this
23 act.