

HOUSE BILL REPORT

SHB 2576

As Amended by the Senate

Title: An act relating to protection of sexual assault victims.

Brief Description: Creating sexual assault protection orders.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Williams, Green, O'Brien, Kirby, Hunt, Ericks, Simpson, Lovick, McCoy, Lantz, Ormsby, Springer and Conway).

Brief History:

Committee Activity:

Judiciary: 1/18/06, 1/30/06 [DPS].

Floor Activity:

Passed House: 2/1/06, 97-0.

Senate Amended.

Passed Senate: 3/1/06, 47-0.

Brief Summary of Substitute Bill

- Establishes procedures for sexual assault protection orders.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Lantz, Chair; Flannigan, Vice Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Kirby, Serben, Springer and Wood.

Staff: Trudes Tango (786-7384).

Background:

There are several types of orders a court may grant that restrict a person's ability to have contact with another person. Although there is potential overlap, the orders generally differ in who they apply to and in what context. For example, no-contact orders are available in criminal proceedings and may be imposed as a condition of release or sentence. Domestic violence protection orders are civil orders and apply to victims of domestic violence committed by family or household members, including persons in dating relationships. Family law restraining orders are also civil, may be issued during dissolution or parentage proceedings, and may contain other provisions related to the dissolution. Anti-harassment

orders are civil and may be obtained by a person who is the victim of on-going conduct that is considered seriously annoying, alarming, or harassing. Vulnerable adult protection orders, which are civil, address conduct such as abuse and financial exploitation of certain disabled, elderly adults.

For domestic violence protection orders, the superior, district, and municipal courts all have jurisdiction to issue an order. However, the jurisdiction of district and municipal courts is limited under certain circumstances, such as when the superior court has a pending family law action involving the parties.

Generally, it is a gross misdemeanor if the person to be restrained knows of the order and violates certain restraint provisions in the order. However, a violation may be a class C felony under certain circumstances, such as if the person violating the order has two prior convictions for violations.

Summary of Substitute Bill:

Procedures for sexual assault protection orders are created.

A. Filing a petition

Any person who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, including a single incident, may file a petition for a sexual assault protection order (SAPO). A third party may file on behalf of a victim who is a minor child, a vulnerable adult, or any other adult who cannot file the petition due to age, disability, health, or inaccessibility. A person 13 years old or older may file a petition on his or her own behalf. The court need not appoint a guardian or guardian ad litem on behalf of a respondent who is 13 years old or older.

The petitioner must file the action in the county or municipality where the petitioner resides. Jurisdiction over these orders is the same as court jurisdiction over domestic violence protection orders. No filing fee may be charged.

B. Service of process

Upon receipt of the petition, the court must order a hearing no later than 14 days from the date of the order. Personal service must be made upon the respondent not less than five court days before the hearing. If timely personal service cannot be made, the court must set a new hearing date and require additional service attempts.

C. Hearings

The court may order a hearing by telephone to accommodate a disability or, in exceptional circumstances, to protect a petitioner. The court may appoint counsel to represent the petitioner if the respondent is represented by counsel.

In proceedings for a SAPO and prosecutions for violations of a SAPO, the prior sexual activity or reputation of the petitioner is inadmissible except: (a) as evidence regarding past sexual conduct between the petitioner and respondent when consent is an issue; or (b) when

constitutionally required to be admitted. Procedures are established regarding the admissibility of such evidence.

D. Ex parte temporary orders and final orders

If the court finds by a preponderance of the evidence that the petitioner has been a victim of nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent, the court shall issue a SAPO.

To obtain an ex parte temporary SAPO, the petitioner must show, in addition to the above, that there is good cause to grant the remedy, regardless of prior service of process or notice upon the respondent because the harm which the order is intended to prevent would likely occur if the respondent were given any prior notice or greater notice than was actually given. An ex parte temporary SAPO order is effective for a fixed period not to exceed 14 days. A full hearing must be set within that 14 day period.

Generally, a final SAPO is effective for a fixed period of time not to exceed two years. However, the duration of an order may vary when entered in conjunction with a criminal proceeding. The order may be extended one or more times.

E. Relief granted in the order

The court may order various relief similar to the relief in domestic violence protection orders. The court may prohibit the respondent from having any contact, including nonphysical contact, with the petitioner directly, indirectly, or through third parties. The court must consider certain factors in cases where the petitioner and respondent are under the age of 18 and attend the same elementary, middle, or high school.

A petitioner shall not be denied a SAPO because the petitioner is a minor or because the petitioner did not report the assault to law enforcement. The court may not require proof of physical injury. In addition, the court may not deny relief based on evidence that the respondent or the petitioner was voluntarily intoxicated or evidence that the petitioner engaged in limited consensual sexual touching.

F. Other provisions

Violations of a SAPO are punishable under the penalty provision governing domestic violence protection orders.

An ex parte temporary order is not admissible in a subsequent civil action for damages arising from the conduct alleged in the petition or order.

"Sexual conduct," "sexual penetration," and "nonconsensual" are defined. Other provisions are established, including provisions for petitioners keeping their addresses confidential in court filings, modifying the terms of an order, the role of sexual assault victim advocates, and a requirement that, by September 1, 2006, the Administrative Office of the Court create standardized forms and informational brochures for sexual assault protection orders.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment: (a) requires that the petitioner set forth in the affidavit the statements or actions that give rise to a reasonable fear of future dangerous acts; (b) provides that a person age 16 or older (rather than age 13) may petition the court for a sexual assault protection order on his or her own, without a guardian; and (c) removes language that made ex parte temporary orders inadmissible in subsequent civil actions.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The policy goals of domestic violence protection orders should apply to sexual assault victims. There are reasons why someone would not want or could not get a civil antiharassment protection order. Antiharassment orders are not sufficient and are designed for different contexts. This bill fills a gap in the law. During a criminal investigation, but before charges are filed, a person could not get a criminal no-contact order. Antiharassment orders require an ongoing pattern of conduct. Often times a sexual assault victim has been assaulted only once.

Testimony Against: There is already a system in place for victims and if there are gaps in the system the Legislature should fix those existing gaps, instead of create a new protection order. The preponderance of the evidence standard is too low and the definitions are too broad. Under the bill the respondent would not be allowed to examine the petitioner's prior conduct. The criminal system, not a civil order, is better at protecting the community.

Persons Testifying: (In support) Representative Brendan Williams, prime sponsor; Suzanne Brown-McBride, Washington Coalition of Sexual Assault Programs; Josephine Saltmach, King County Sexual Assault Resource Center; and Pam Loginsky, Washington Association of Prosecuting Attorneys.

(Opposed) Amy Muth, Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.