

HOUSE BILL REPORT

ESB 6357

As Reported by House Committee On:
Judiciary

Title: An act relating to service of process in domestic violence cases.

Brief Description: Regarding service of process in domestic violence cases.

Sponsors: Senators Kohl-Welles, Keiser, Regala, Kline, Murray, Fairley, McDermott, Hargrove, McCaslin, Tom, Marr and Rasmussen.

Brief History:

Committee Activity:

Judiciary: 2/20/08, 2/22/08 [DP].

Brief Summary of Engrossed Bill

- Prohibits a court from requiring more than two attempts to personally serve a respondent before permitting service by publication or mail for certain domestic violence protection orders.
- Provides that personal service must be made on the nonmoving party at least five court days before a hearing to modify the terms of all existing domestic violence protection orders.
- Prohibits a court from requiring more than two attempts to personally serve the nonmoving party with notice of a modification hearing before permitting service by publication or mail.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 10 members: Representatives Lantz, Chair; Goodman, Vice Chair; Warnick, Assistant Ranking Minority Member; Ahern, Flannigan, Kirby, Moeller, Pedersen, Ross and Williams.

Staff: Lara Zarowsky (786-7123).

Background:

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

Orders of Protection

An order of protection is available to a petitioner who alleges the existence of domestic violence by a respondent. The petitioner must provide an affidavit, submitted under oath, stating the particular facts and circumstances giving rise to the request for an order of protection. A filing fee may not be imposed for the submission of a petition, and the necessary number of certified copies of the order are provided to a petitioner free of charge. A petition may be made notwithstanding any other action pending between the parties, except in cases where the court "realigns" the petitioner and respondent after finding that the original petitioner is the abuser and the original respondent is the victim.

Upon receipt of a petition for protection, the court must schedule a hearing within 14 days. The court may schedule a hearing by telephone in certain circumstances, provided that assurances of the petitioner's identity are secured before the hearing is conducted.

Service

The respondent named in the petition must be personally served no less than five court days prior to the hearing.

If timely personal service cannot be made, the court must set a new hearing date and either (1) require "additional attempts" to serve the respondent personally, or (2) allow the respondent to be served by publication or through first class mail.

If the court permits service by publication or mail, the next hearing date must be set no later than 24 days from the date of the order. The court may issue a temporary ex parte order of protection for the period of time pending a hearing.

Modification

The court may modify the terms of an existing order of protection pursuant to either party's submission of an application to modify. The application must provide notice to all parties, and a hearing must be held before any modification to the terms of the order may be modified.

If an order is terminated or modified before the date it was set to expire, the court clerk must send a true copy of the modified or terminated order to the law enforcement agency specified on the modified or terminated order.

Summary of Bill:

The court must allow service of certain domestic violence protection orders by publication or mail after a second attempt to serve the respondent by personal service has failed, unless the petitioner requests additional time to attempt personal service.

Personal service upon the nonmoving party must be accomplished no less than five court days before a hearing is held for the purpose of modifying an existing protection order.

The court must allow notice of the modification hearing to be served by publication or mail after a second attempt to serve the respondent personally has failed, unless the moving party requests additional time to attempt personal service.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) On April 2, 2007, Rebecca Griego, an employee and graduate of the University of Washington, was murdered by her former boyfriend who then took his own life. It is important to understand what Rebecca went through before her death. She was a survivor of domestic violence. Her abuser kept contacting her while she was desperately trying, along with her sister Rachel, to serve a temporary protection order. Rebecca's abuser would call and taunt her about "getting" her and also started threatening Rachel. Rachel and Rebecca did everything they could do, and could not serve the abuser. They went to places he frequented, showed photos, talked to his friends, and spoke with campus police and people at the University of Washington. Unfortunately he was very manipulative and was able to evade service.

Rebecca and Rachel had to go back to court repeatedly. There are not uniform standards across the state for service of protection orders. This bill, while if it had been a statute a year ago may not have prevented Rebecca's murder, it possibly could have, and it may be helpful now to others in abusive situations and may offer peace of mind. It should not be left to various jurisdictions as to whether alternate methods of service are available. We need to pass this legislation so we know we're doing everything we can to be sure this situation does not happen again. All employees and students at our universities certainly deserve to have a safe educational and working environment, but this bill promotes safety beyond the university setting.

The legal system should not hinder the quick custody and punishment of an abuser. Hopefully this bill will decrease the amount of time and effort the abused victim needs to endure in serving and securing a permanent protection order. A victim should not be penalized if an abuser cannot be served. Rebecca's stalker had evaded the police and service of process which left her and Rachel having to return to court numerous times. The last court date was scheduled for the day after Rebecca's murder. Their only option was to distribute 911 service packs and look for the abuser themselves in order to serve him. This, in and of itself, put their lives in danger. Rebecca and Rachel were not offered alternative forms of service, such as by mail or publication. The crippling fear a victim experiences in trying to serve an abuser needs to be reversed onto the abuser. There must be unified efforts to create informative avenues

and assistance to domestic violence victims to find abusers. Domestic violence is a community problem. The opportunity for publication is one more step toward accountability.

The issue of service of process is a recurring one which is problematic across the state. Repeated trips to court is burdensome on victims in terms of time, and also in knowing that the abuser is using the court system as another mechanism to manipulate and control them. The bill provides uniformity and limits the ability of the abuser to manipulate the process, giving a little bit more certainty and control to the victim.

In existing law there are no provisions relating to what service of process needs to look like in modifying an order. Victims sometimes discover that the protection order in place between them and their abuser has been modified without their knowledge. This law provides a needed notice requirement in modification hearings. There may also be benefit to documenting the petitioner's efforts to serve the respondent.

(Opposed) None.

Persons Testifying: Grace Huang, Washington Coalition Against Domestic Violence; Diane Perry; and Rachel Griego.

Persons Signed In To Testify But Not Testifying: None.