

# HOUSE BILL REPORT

## HB 2563

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**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:** Representatives Upthegrove and Lantz.

**Brief History:**

**Committee Activity:**

Judiciary: 1/16/08, 1/23/08 [DPS].

**Brief Summary of Substitute Bill**

- Requires a court to allow service of process by publication or mail for certain domestic violence protection orders after a mandatory second attempt to serve a respondent personally has failed.
- Requires personal service on the nonmoving party at least five court days before a hearing to modify the terms of certain domestic violence protection orders.
- Requires a court to allow notice of a modification hearing to be served on the nonmoving party by publication or mail after a mandatory second attempt to obtain personal service has failed.

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### 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; Goodman, Vice Chair; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern, Flannigan, Kirby, Moeller, Pedersen, and Williams.

**Staff:** Lara Zarowsky (786-7123).

**Background:**

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

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 service on the respondent to be made either 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 an application to modify. The application must provide notice to all parties, and a hearing must be held before the terms 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.

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#### **Summary of Substitute Bill:**

The court must allow service by publication or mail after a mandatory 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 to modify an existing protection order.

If personal service cannot be accomplished, the court must allow notice of the modification hearing to be served on the nonmoving party by publication or mail after a mandatory second

attempt to obtain personal service has failed, unless the moving party requests additional time to attempt personal service.

If service by publication or mail is permitted, the court must set the modification hearing date no later than 24 days from the date of the order permitting service by publication or mail.

**Substitute Bill Compared to Original Bill:**

The substitute bill deletes the statement of purpose from the original bill.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Staff Summary of Public Testimony:**

(In support) Domestic violence protection orders are a critical tool to keep victims safe. The way they are administered and processed can have an important impact on the safety of the victim. One burden to the victim is having to return to court multiple times because the perpetrator is dodging service. This bill makes minor changes that have the potential to prevent huge tragedies in the future.

Generally when a petitioner approaches the court alleging domestic violence, a temporary order is issued ex parte, without notice to the respondent, and a hearing is set. At that point it is up to law enforcement or a process server to serve the respondent. When a perpetrator purposefully avoids service, the victim is required to go to court again and again, indefinitely, since the current RCW doesn't limit the number of times this can happen. A trip to court can take about four hours, and since the victim of domestic violence is often the sole supporter of their children, this kind of time off work can jeopardize jobs and burdens by requiring them to find childcare.

One of the main barriers to victims of domestic violence in getting permanent orders of protection is the difficulty of getting service. This isn't an easy process to go through or understand, and most victims are pro se in trying to get these orders so they do not have the benefit of counsel to explain what's happening. It's very important that we have a uniform procedure in place so that victims can go through this process and have access to justice. The longer it takes to get a permanent order, the more time the victim has to change their mind. The more failed attempts at getting a permanent order is experienced as a failure for the victim of domestic violence.

Rebecca Griego was killed by her abuser at the University of Washington in the spring of 2007. Having a protection order may not have prevented her death, but the Griego sisters were unable to serve the abuser in this case and were required to go back to court repeatedly.

They were basically told that if they weren't able to serve him the case would be dismissed. There should be clarity about what is necessary to get service.

This bill would be a good change. The courts want to see the person served personally because violation of an order of protection is criminal. The benefit of this bill is that it allows easier service, but the prosecutors are still required to prove a knowing violation. In the rare case that there is notice by publication, the perpetrator can be told about the order at that time, and then be prosecuted if a violation happens again. This bill strikes a good balance, and doesn't go too far either way.

(Opposed) None.

**Persons Testifying:** Representative Upthegrove, prime sponsor; Lisa Aguilar, Conny Penry, and MJ McCallum, Snohomish County Center for Battered Women; Tom McBride, Washington Association of Prosecuting Attorneys; and Grace Huang, Washington Coalition Against Domestic Violence.

**Persons Signed In To Testify But Not Testifying:** None.