

HOUSE BILL REPORT

SHB 1307

As Passed House:
February 25, 2013

Title: An act relating to sexual assault protection orders.

Brief Description: Concerning sexual assault protection orders.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Goodman, Lytton, Wylie, Jinkins, Cody, Roberts, Santos and Moscoso).

Brief History:

Committee Activity:

Judiciary: 2/7/13, 2/12/13 [DPS].

Floor Activity:

Passed House: 2/25/13, 92-0.

Brief Summary of Substitute Bill

- Prohibits courts from requiring either party to pay for appointment of a guardian ad litem in sexual assault protection order proceedings.
- Allows sexual assault protection orders and petitions to be served by publication or mail in certain circumstances.
- Adds provisions regarding hearings on contested petitions for renewal.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Goodman, Hope, Jinkins, Kirby, Klippert, Nealey, Orwall, Roberts and Shea.

Staff: Omeara Harrington (786-7136).

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.

A person may petition for a sexual assault protection order if they have been subjected to one or more incidents of nonconsensual sexual conduct or penetration that gives rise to a reasonable fear of future dangerous acts. These orders provide a remedy for victims of sexual assault who do not qualify for a domestic violence protection order. Orders last for a fixed time not to exceed two years.

Guardians ad Litem. Petitions for sexual assault protection orders may be filed by the victim or by another person on behalf of a victim who is a minor or vulnerable adult. A minor who is at least 16 may petition for a sexual assault protection order on their own without a guardian ad litem or next friend. The court may, but is not required to, appoint a guardian ad litem for a petitioner or respondent who is a minor, but at least 16 years old.

Service of Process. The respondent must be personally served with the petition and notice of the hearing not less than five court days prior to a full hearing on an initial petition for a sexual assault protection order, or a hearing for renewal or modification of an existing order. If timely service cannot be made, the court must set a new hearing date and require additional attempts to personally serve the respondent. Final orders must also be personally served on the respondent. If an order recites that the respondent was present in court when the order was entered, further proof of service is unnecessary.

The court may issue an ex parte temporary protection order pending the hearing. The temporary order is effective for a fixed period not to exceed 14 days from the issuance of the temporary order.

Motion for Renewal. Any sexual assault protection order, whether it is final or temporary, may be renewed one or more times. If the renewal is uncontested and no modification is sought, the order may be renewed on the basis of a motion or affidavit stating that there has been no material change in relevant circumstances. Renewals may only be granted in open court.

Summary of Substitute Bill:

Guardians ad Litem. If the court appoints a guardian ad litem for either the petitioner or the respondent, the appointment is at no cost to either party.

Service of Process. Respondents may be served by publication or mail in certain situations. The court cannot require more than two unsuccessful attempts at personal service of an initial petition prior to permitting service by publication or mail, unless the petitioner requests further attempts to personally serve. If service by publication or mail is permitted, the hearing date is set for no more than 24 days from the date of the order. If a temporary ex parte order is in place the court must reissue the temporary order to cover the lengthened time for service.

The same rules allowing service by publication or mail for initial petitions also apply to petitions for renewal and modification, and to the service of final orders.

The court may order service by publication if:

- the serving sheriff or municipal peace officer has filed an affidavit stating that personal service could not be made;
- the petitioner has filed an affidavit stating that the petitioner believes the respondent is hiding from service;
- the server has mailed a copy of the summons, in a form laid out in statute, notice of the hearing, and a copy of the ex parte order to the respondent's last known address, if any; and
- the court has found that reasonable grounds exist to believe that the respondent is hiding from service, and further attempts to personally serve would be futile.

Service by publication must be made in one of the three most widely circulated newspapers in the county where the petition was brought, and the county of the respondent's last known address, once per week for three consecutive weeks.

If the circumstances warranting service by publication are present, and the serving party files an affidavit from which the court determines that service by mail is just as likely to give actual notice to the respondent as would service by publication, the court may order service by mail. Any nonparty over 18 who is competent to be a witness may complete service by mail by mailing copies of the order and other process to the respondent at his or her last known address, or other appropriate address as determined by the court. Two copies must be mailed, one by ordinary first-class mail, and the other by a form requiring a signed receipt showing when and to whom it was delivered.

Motion for Renewal. If a motion for renewal is contested, the court will order a hearing for no more than 14 days from receipt of the motion, or 24 days if the court has allowed service by publication or mail. The court may schedule a hearing by telephone pursuant to local court rule, to reasonably accommodate a disability or, in exceptional circumstances, to protect the petitioner from further assault.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) These changes address access to justice issues in seeking a sexual assault protection order. Under the current law, it is more burdensome to obtain a sexual assault protection order than other kinds of orders. The changes in the bill are not new concepts, and are borrowed from the domestic violence protection order statutes.

The guardian ad litem provision is an important improvement to the sexual assault protection order chapter. Typically the guardian ad litem is a parent, but when someone else is appointed there has been an issue with the petitioner being held responsible for the cost. Now neither party may be required to pay, which is consistent with the other sexual assault protection order statutes that waive service and filing fees.

These changes will ease service and make it easier to renew the order once it has been entered. Sexual assault protection orders are the only orders that require personal service. Providing notice is a significant barrier for those seeking a sexual assault protection order, and this has been a consistent complaint. Petitioners end up having to go to court multiple times to get a renewal. They have to take time out of their daily life and arrange work, childcare, and other responsibilities, and they may have to face their perpetrator. It also presents a public safety risk.

(Opposed) None.

Persons Testifying: Representative Goodman, prime sponsor; Andrea Piper Wentland, Washington Coalition of Sexual Assault Programs; and Laura Jones, King County Sexual Assault Resource Center.

Persons Signed In To Testify But Not Testifying: None.