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## Civil Rights & Judiciary Committee

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### HB 1320

**Brief Description:** Modernizing, harmonizing, and improving the efficacy and accessibility of laws concerning civil protection orders.

**Sponsors:** Representatives Goodman, Thai, Fitzgibbon, Hackney, Wylie, Gregerson, Senn, Ortiz-Self, Davis, Valdez, Lekanoff, Macri, Slatter and Peterson.

#### Brief Summary of Bill

- Consolidates and harmonizes laws governing domestic violence protection orders, sexual assault protection orders, stalking protection orders, anti-harassment protection orders, vulnerable adult protection orders, and extreme risk protection orders under a new chapter governing all protection orders.
- Amends provisions of law addressing the recognition and enforcement of Canadian domestic violence protection orders.
- Revises laws governing orders to surrender and prohibit weapons, revocation of concealed pistol licenses, unlawful possession of firearms, and domestic violence no-contact orders.
- Repeals existing chapters and provisions governing protection orders and makes conforming and technical changes to numerous provisions of law.

**Hearing Date:** 1/27/21

**Staff:** Edie Adams (786-7180).

#### Background:

There are a number of civil protection orders that allow a person to petition a court to seek

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

protection from harmful or threatening behavior. Protection orders are available for persons subjected to domestic violence, sexual assault, stalking, harassment, and vulnerable adult abuse. A court when entering a protection order may grant broad relief to protect the petitioner, including entering relief to restrain a person from having contact with or threatening another person or to exclude the person from certain locations or coming within a specified distance of certain locations, among many other forms of relief. In addition to protection orders that allow a court to protect a particular individual, there exists an extreme risk protection order (ERPO), which allows a court to prohibit a person from possessing, purchasing, accessing, or receiving a firearm if the person poses a significant risk of harm to self or others by having possession or access to firearms.

With respect to all protection orders, a court may enter an ex parte temporary protection order and, after a full hearing, a final order that lasts for a fixed term, or in some cases is permanent. Generally, a violation of the restraint provisions and certain other provisions of a protection order is a gross misdemeanor offense. A violation of some orders is a class C felony if the person violating the order has two prior convictions for violations of a similar order or if the violation involved an assault or reckless endangerment. A violation of an ERPO is a gross misdemeanor offense for a first or second violation and becomes an unranked class C felony on a third violation.

Each type of protection order is governed by its own chapter setting forth procedures and requirements with respect to the standards and process for filing petitions, court jurisdiction to hear protection order proceedings, conduct of hearings, relief that may be granted, mechanisms for modifying, renewing, or terminating orders, and penalties and enforcement provisions. There are many similarities in these procedures and requirements across the protection order chapters, but there are also numerous differences.

#### Surrender of Firearms and Dangerous Weapons.

A person who is subject to a domestic violence, sexual assault, stalking, or anti-harassment protection order may be required to surrender his or her firearms, dangerous weapons, and concealed pistol license (CPL) while the order is in place. In entering most orders, if the person to be restrained has used or threatened to use a firearm in the commission of a felony, or is otherwise disqualified from having a firearm, the court either may or must require the person to surrender their firearms, dangerous weapons, and CPL, depending on the evidence presented. In addition, the court may order surrender where the person's possession of a firearm or dangerous weapon presents a serious and imminent threat to public health or safety, or to the health or safety of any individual. A court is required to order the surrender of firearms, dangerous weapons, and any CPL when entering certain qualifying orders involving intimate partners.

#### Canadian Domestic Violence Protection Orders.

State law provides for the enforcement of civil domestic violence protection orders (DVPOs) issued by Canadian courts, but only with respect to the parts of the order that prohibit contact with or being within specified locations associated with a protected person or that prohibit harassing or threatening conduct directed at a protected person. If a law enforcement officer

determines there is probable cause to believe a valid Canadian DVPO exists and has been violated, the officer must enforce the terms of the order in the same manner as a DVPO issued in Washington. A copy of the order constitutes probable cause to believe that a valid order exists.

A person with a valid Canadian DVPO may file the order with Washington courts. Provisions for registration of orders are also provided, although there is no current registry of protection orders in Washington. Upon application of a petitioner or respondent, a court may enforce or refuse to enforce an order following procedures for enforcement of a Washington DVPO.

### **Summary of Bill:**

A new chapter of law is established to govern domestic violence protection orders (DVPOs), sexual assault protection orders (SAPOs), Stalking protection orders (Stalking POs), anti-harassment protection orders (AHPOs), vulnerable adult protection orders (VAPOs), and extreme risk protection orders (ERPOs). The following chapters and provisions of law currently governing protection orders are repealed: 7.90, 7.92, 7.94, 10.14, 26.50, RCW 74.34.115 through 74.34.163 and 74.34.200, and RCW 26.10.115.

The new chapter consolidates and harmonizes protection order laws and generally provides uniformity in rules and procedures for all protection orders. Differences in provisions are retained in some circumstances and new provisions governing protection orders are established. The new chapter is organized into parts addressing the following issues: intent and definitions; jurisdiction and venue; filing; service; hearings; order duration, relief, and remedies; reissuance and renewal; violations and enforcement; modification and termination; and miscellaneous provisions.

An overview of some of the main provisions and changes from existing provisions governing protection orders are summarized below.

### Definitions.

Relevant definitions for all protection orders are consolidated into one new section, and revisions are made to the definitions of some terms, including:

- With respect to vulnerable adults, the definitions of "abuse," "mental abuse," "physical abuse," and "sexual abuse" are modified to include intentional and reckless acts, in addition to willful acts.
- The definition of "domestic violence" is modified to remove the requirement that infliction of fear of harm be imminent, and to include "unlawful harassment" and "coercive control." "Coercive control" is defined to mean a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty and is used to cause another to suffer physical or psychological harm.
- The definition of "family or household member" is expanded to apply to all persons (not just adults) related by blood or marriage or who currently or formerly resided together, and to include a parent's intimate partner and children and a person who is or has acted as a legal guardian.

- The definition of "intimate partner" is revised to encompass persons who have or have had a dating relationship where both persons are at least 13 years of age or older.
- The definition of "unlawful harassment" is revised to include a single act of violence or threat of violence directed at a specific person that seriously alarms, annoys, harasses, or is detrimental to such person, and that serves no legitimate or lawful purpose, which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner. A single threat of violence must include: (i) a malicious and intentional threat as described in the hate crimes statute; or (ii) the presence of a firearm or other weapon.

New definitions are also provided for the following terms: "consent," "firearm," "full hearing," "full protection order," "possession," and "temporary protection order."

#### Jurisdiction and Venue.

The current differing approaches concerning subject matter jurisdiction of superior courts and courts of limited jurisdiction to hear protection order proceedings are retained. The Washington State Women's Commission (Women's Commission), in consultation with the Administrative Office of the Courts (AOC) and other stakeholders, must consider and make recommendations by December 1, 2021, on the differing approaches to jurisdiction across protection orders and whether jurisdiction should be harmonized, modified, or consolidated.

The venue for all protection order proceedings is in the county or municipality where the petitioner resides. A petitioner may also file in the county or municipality where: an act giving rise to the petition occurred; a child to be protected by the order primarily resides; or the petitioner resided prior to any relocation that was due to the respondent's conduct.

Provisions governing jurisdiction over non-residents apply to all protection order proceedings.

#### Filing.

The six different types of protection orders are retained and provisions setting forth who may petition for the order and when a person may file a petition on behalf of another person, such as a minor or vulnerable adult, are specified. Minors who are 15 years of age or older may petition for any type of protection order for themselves. When a parent involved in a dependency case is directed to seek a protection order, the parent may request the Department of Children, Youth, and Families to file the petition.

A petitioner who is sexually assaulted, stalked, or unlawfully harassed by an intimate partner or family or household member should, but is not required, to seek a domestic violence protection order. A petition for any type of protection order must not be dismissed or denied on the basis that the alleged conduct meets criteria for issuance of a different type of protection order. If a petitioner files in the wrong court, the court must enter findings establishing the correct court and have the petition transferred to the correct court.

Procedures for filing petitions are specified and new provisions governing electronic filing of

petitions are established. Courts must permit petitions and all other filings in connection with a petition to be filed either: in person; remotely through an online filing system; or by mail for persons who are incarcerated or unable to file in person or through an electronic filing system.

Electronic filings may be made at any time of the day. The electronic filing system should allow for enrollment of the petitioner to electronically track and receive notifications regarding the progress of the petition, and for the respondent to enroll for similar notifications. Parties, attorneys, and witnesses may electronically sign sworn statements in all filings.

Court rules must address that contact information provided by the petitioner through the filing process and contact information of parties and witnesses must be exempt from public disclosure. Minor children must be referred to in the petition and other publicly available filed documents by their initials and age.

Consistency across protection orders is established with respect to a number of issues, including:

- A petition may be filed whether or not there is another action between the parties, and a person's right to petition is not affected by the person leaving a residence or household.
- A petitioner's address may be omitted from filed documents if disclosure would risk harm to the petitioner or petitioner's family or household.
- A guardian ad litem may be appointed for a petitioner or a respondent who is under age 18.
- Relief may not be denied or delayed on the grounds that the relief is available in another action.

New duties are established for the AOC, including requirements to:

- develop and distribute a single petition form that may be used to file for any type of protection order, except an extreme risk protection order, by December 1, 2021;
- prepare instructions, brochures, forms, and a handbook on the protection order process in consultation with civil legal aid, culturally specific advocacy programs, and domestic violence and sexual assault advocacy programs, and make instructions and informational brochures available online to view and download at no cost;
- work with the Women's Commission and other stakeholders to develop standards for filing evidence in a way that protects victim safety and privacy and standards for private vendors who provide services related to filing systems.

Court clerks must obtain community resource lists addressing specified programs and resources which must be made available as part of or in addition to informational brochures. Court clerks must not make an assessment of the merits of a petition or refuse to accept for filing any petition that meets procedural requirements.

#### Service.

Provisions governing service requirements for protection order proceedings and protection orders are consolidated and harmonized for all protection orders and new provisions allowing for electronic service in most cases are established.

Personal service by law enforcement is required for: ERPOs and protection orders with orders to surrender and prohibit weapons (OTSWs); cases that involve transferring custody of a child from the respondent to the petitioner; or cases involving vacating the respondent from a shared residence. Personal service by law enforcement should be used where the respondent is incarcerated. Otherwise, personal service may be by law enforcement unless the petitioner elects service by a third party.

Service by electronic means must be prioritized for all order types at the time of issuance of temporary protection orders, except where personal service is required. Service by electronic means must be effected by law enforcement unless the petitioner elects service by a third party. Electronic service may be through email, text message, social media applications, or other technologies. Requirements are established for transmitting electronic service, verifying receipt and providing sworn proof of service, and documenting when electronic service is complete.

Service by mail is permitted only when electronic service is not possible and there have been two unsuccessful attempts at personal service, or where the petitioner requests it in lieu of electronic service where personal service is not required. Service by publication is permitted only where all other means of service have been unsuccessful or are not possible.

Courts may authorize multiple methods of service and must favor speedy and cost-effective methods of service. Courts must not dismiss a petition or motion, over the objection of the petitioner, based on inability to serve the respondent unless all available methods of service have been unsuccessfully attempted.

Consistent rules are established governing: service on a respondent who is under the age of 18 or an individual subject to a guardianship or conservatorship; requirements for when and how service by law enforcement must be completed and documented; materials that must be included with service; and time requirements for service.

Courts and law enforcement agencies must adopt rules, protocols, and pattern forms to standardize and implement best practices for service and efficient transmission of court documents to law enforcement for entry into criminal justice databases and returns of service or property.

#### Hearings.

More detailed and consistent provisions are established governing how protection order hearings are conducted. Protection order proceedings are special proceedings and statutory provisions governing hearings supersede inconsistent civil court rules.

Courts must prioritize hearings on ex parte temporary protection orders over less emergent proceedings. Courts must also prioritize ERPO hearings where a law enforcement agency is the petitioner and may allow a law enforcement petitioner to participate telephonically or allow another representative to present information to the court if the officer is not required for testimonial purposes.

A hearing on a petition must be set regardless of whether the court has granted or denied a request for a temporary protection order. Rules are provided governing requests to stay, continue, or delay a hearing due to the pendency of a parallel criminal investigation or prosecution of the respondent.

Hearings must be conducted upon live testimony of the parties and sworn declarations unless the court finds testimony of other witnesses is necessary and material. Pre-hearing discovery is not permitted unless specifically authorized by the court. The rules of evidence need not be applied other than with respect to privileges, requirements of the rape shield statute, and evidence rules governing evidence of a sexual assault victim's past behavior and the immigration status of a party or witness.

Where the court finds that a petition does not contain sufficient allegations, the court must continue the matter and allow the petitioner to file an amended petition unless amendment would be futile. Courts must not require parties to submit duplicate copies of filed documents. If possible, courts must have petitioners and respondents gather in separate locations and enter and depart the court room at staggered times.

Protection order hearings may be conducted in person or remotely, including by telephone, video, or other electronic means. The court must grant any request by the petitioner or respondent to appear remotely by telephone, video, or other electronic means unless the court finds good cause to require in-person attendance or attendance by a specific means. Procedures and requirements for conducting remote hearings are provided, including requirements for resetting a hearing where a party is unable to appear remotely due to technological issues.

Specific grounds on which it is improper for a court to deny or dismiss a petition are provided. If a court declines to issue a protection order, the court must state in writing the particular reasons for the denial and explain from the bench: that the petitioner may refile a petition at any time based on new evidence; the parties' right to seek revision, reconsideration, or appeal; and the parties' rights of access to the court transcript and recordings of the hearing.

Standards are established for compliance hearings. Only the respondent is required to appear at a compliance hearing, but the petitioner may appear and provide evidence to the court or file a responsive declaration. Any order entered pursuant to a compliance hearing must be served on the respondent and the court must use best efforts to notify the petitioner of the outcome of the hearing.

The court may appoint counsel to represent a petitioner if the respondent is represented by counsel. For all proceedings, protection order advocates and support persons are allowed to accompany the petitioner to the proceedings. Standards for the appointment of interpreters are provided, and include requirements that a court may not appoint an interpreter who is not trained and may not appoint a person to interpret who is serving as an advocate for the party.

The Women's Commission, in consultation with the AOC and stakeholders, must consider and make recommendations on: use of technology to reduce administrative burdens in protection order proceedings; improving access to unrepresented parties; best practices where there are civil protection order proceedings and criminal proceedings concerning the same alleged conduct; and best practices in data collection and sharing.

#### Duration, Relief, and Remedies.

The standard for issuance of an ex parte temporary protection order for all protection orders other than ERPOs requires a showing that irreparable injury could result if an order is not issued immediately without prior notice to the respondent. If the court declines to issue an ex parte temporary protection order, the court must state the particular reasons for the denial and must still set a full hearing on the petition.

All forms of relief currently available under all protection order statutes other than ERPOs are consolidated into one section that applies with respect to all protection orders other than ERPOs, including ex parte temporary protection orders. Additional forms of relief are also provided, including allowing a court to:

- prohibit a respondent from knowingly coming within, or knowingly remaining within, a specified distance of the protected party's person or vehicle; distance restrictions in protection orders must presumptively be 1,000 feet unless the court finds good cause for a shorter distance;
- restrict the respondent from engaging in abusive litigation or frivolous filings, making harassing or libelous communications about the petitioner to third parties, or making false reports to investigative agencies;
- order financial relief and restrain transfer of jointly owned assets; and
- restrain the respondent from possessing or distributing intimate images depicting the petitioner.

Other provisions provide standards for addressing relief regarding a residential schedule for the children and mental health evaluations, and prohibit electronic monitoring of respondents who are minors. The court is prohibited from taking certain actions, including ordering the petitioner to obtain services or pay for the respondent's attorneys' fees or costs.

Full protection orders, other than ERPOs, may be for a fixed period of time or permanent, except in cases restraining the respondent from contact with the respondent's children. The court must not grant relief for less than one year unless specifically requested by the petitioner. The court may order law enforcement to assist the petitioner in collecting possessions and execution of the order. Consistent provisions governing entry of protection orders into the Judicial Information System (JIS) and criminal justice databases are provided.

Additional new provisions include: allowing ERPO records to be sealed where the order was based solely on threats of self-harm of the respondent; requiring certain findings before issuing agreed orders; requiring automatic reissuance of an OTSW when reissuing a temporary protection order that included a temporary OTSW; and allowing courts to correct clerical or



technical errors in protection orders.

The JIS Data Dissemination Committee must develop recommendations on best practices for courts to consider regarding whether and when sealing of records in protection order cases is appropriate or necessary and methods to prohibit Internet publication of filing or registration information of protection orders when publication is likely to reveal the identity or location of the protected person.

#### Reissuance and Renewal.

More detailed standards for the reissuance and renewal of protection orders are consolidated and harmonized for all protection orders, other than ERPOs.

A temporary protection order may be reissued upon agreement of the parties, to provide additional time for service of the temporary order, or for good cause. Temporary OSTWs must be automatically reissued with the temporary protection order. There is a rebuttable presumption that a temporary order should not be reissued more than once for more than 30 days at the request of the respondent absent agreement, good cause, or need for additional time for service. Courts must not require the petitioner to complete a new law enforcement information sheet when an order is reissued or a full order is entered unless information needs to be updated.

A court must grant a motion for renewal of a protection order unless the respondent proves that there has been a substantial change in circumstances and that certain conditions relevant to each type of protection order are met. The plaintiff bears no burden of proving a current reasonable fear of harm by the respondent. A list of non-weighted factors is provided for the court to consider in determining whether there has been a substantial change of circumstances. A court may not deny a motion to renew based on certain specifically listed circumstances, including that: the respondent has not violated the order; the petitioner or respondent is a minor; or the respondent no longer lives near the petitioner.

The terms of the original protection order must not be changed except upon request of the petitioner. The renewed protection order may be for a fixed period of time of no less than a year or may be permanent. If the protection order includes the parties' children, a renewed protection order may be issued for more than one year, subject to subsequent orders in a family law proceeding. The court may award costs, service fees, and reasonable attorneys' fees to the petitioner.

#### Violations and Enforcement.

Provisions governing violations of DVPOs, SAPOs, Stalking POs, and VAPOs remain consistent with current law, except to include "knowingly coming within, or knowingly remaining within, a specified distance of a protected party's person or a protected party's vehicle."

Violation provisions governing anti-harassment protection orders are modified. An adult respondent is guilty of a gross misdemeanor only if the respondent willfully disobeys:

- restraint provisions prohibiting acts or threats of violence, unlawful harassment, or stalking

- of a protected person, or prohibiting contact with a protected party;
- a provision excluding the person from a residence, workplace, school, or day care;
- a provision prohibiting the person from knowingly coming or remaining within a specified distance of a location, protected party's person, or protected party's vehicle; or
- a provision prohibiting interfering with the protected party's efforts to remove a pet.

The penalty for violation of an ERPO is revised. A person who violates an ERPO is guilty of the crime of Unlawful Possession of a Firearm in the second degree. Where personal service of an ERPO is not possible, the respondent must surrender firearms to law enforcement within 24 hours (rather than 48 hours) of being served by alternate service.

#### Modification and Termination.

Consistent and more detailed standards are provided for modification or termination of DVPOs, SAPOs, Stalking POs, and AHPOs. Standards for modification and termination of VAPOs and termination of ERPOs are not changed.

A motion to modify or terminate an order must be determined based on written declarations and evidence submitted to the court. A hearing may be set only if the court finds adequate cause exists. The respondent has the burden to prove by a preponderance of the evidence that there has been a substantial change in: (1) acts of domestic violence, in cases involving DVPOs; physical or nonphysical contact, in cases involving SAPOs; acts of stalking, in cases involving Stalking POs; and acts of unlawful harassment, in cases involving AHPOs. The plaintiff bears no burden of proving a current reasonable fear of harm by the respondent.

A list of non-weighted factors is provided for the court to consider in determining whether there has been a substantial change of circumstances. The court may not base this determination on the fact that time has passed without a violation of the order. The court may decline to terminate an order if the acts of domestic violence, sexual assault, stalking, unlawful harassment, and other harmful acts that were the basis of the protection order were of such severity that the order should not be terminated.

A respondent may seek to modify or terminate an order no more than once in every 12-month period that the order is in effect. A court may require the respondent to pay the petitioner for costs and reasonable attorneys' fees incurred in responding to the motion.

A protected person who has a child or adopts a child after the protection order issued but before the order expires may seek to include the child in the order on an ex parte basis.

The court clerk must forward orders modifying or terminating any protection order to a law enforcement agency, which must promptly enter a modified order into, or remove a terminated order from, the computer-based criminal intelligence information system.

#### Miscellaneous.

Any order available under the act, other than an ERPO, may be issued in actions under the

Family Reconciliation Act, the Uniform Parentage Act, and laws governing dissolution proceedings.

Nothing in the act affects the validity of protection orders issued prior to the effective date of the act under laws being repealed by the act. Prior orders are subject to the act, including provisions governing enforcement, modification, and terminations.

#### Extreme Risk Protection Orders and Orders to Surrender and Prohibit Weapons.

Provisions addressing enforcement and penalties for ERPOs and OTSWs are revised.

The crime of Unlawful Possession of a Firearm in the second degree is amended to include possession of a firearm while the person is subject to an ERPO that was issued after a hearing for which the person received actual notice and had an opportunity to participate.

A law enforcement agency must revoke a respondent's CPL upon receipt of an ERPO or OSTW. Any agency, not just the license-issuing agency, may revoke the CPL. A law enforcement agency must ensure entry of an OTSW and the revocation of any CPL into the appropriate database making the respondent ineligible to possess firearms and a CPL.

When entering a protection order, a court must (rather than may) issue an OTSW where there is a preponderance of the evidence that specified factors are present. An OTSW may be issued when a court is issuing a vulnerable protection order. The OTSW includes a prohibition on having custody or control, purchasing, receiving, or attempting to purchase or receive a firearm or firearms parts, or a dangerous weapon.

A representative of the prosecutor's office or city attorney's office may appear and be heard at any hearing that concerns compliance with an ERPO or OTSWs, and the court may allow the prosecutor or city attorney to question the respondent regarding compliance.

The court may order that a respondent or defendant must not be excused from complying with or testifying about complying with an ERPO or OTSW on the ground that the testimony may incriminate the respondent or subject the respondent to a penalty of forfeiture. However, no testimony or other information compelled over an assertion of a privilege against self-incrimination may be used against the respondent in a criminal proceeding, except under specified circumstances.

The Department of Licensing or other appropriate agency must make the following information available to prosecuting attorneys, city attorneys, public defender agencies, probation services personnel, and judicial officers and court staff for the purposes of determining: a person's eligibility to possess firearms; a person's firearms purchase history; and whether a person has or previously had a CPL or has applied for a CPL.

#### Canadian Domestic Violence Protection Orders.

Laws governing Canadian DVPOs are amended. A new section is established governing scope and enforceability of a Canadian DVPO. A Canadian DVPO does not need to be filed with the clerk of court or granted recognition and enforcement by a court order prior to enforcement by a law enforcement officer.

Procedures for a court proceeding for recognition and enforcement of a Canadian DVPO are provided consistent with the new protection order chapter. A petitioner may not be charged any fees for filing, service of process, or the provision of documents. Service of process and hearings are to be conducted in accordance with provisions of the new protection order chapter, and interpreters must be appointed as required in the new protection order chapter.

Provisions addressing registration of Canadian DVPOs are removed. A person filing a Canadian DVPO must file a declaration signed under penalty of perjury stating that, to the best of the individual's knowledge, the order is valid and in effect. A copy of a filed Canadian DVPO, or court order addressing recognition and enforcement of a Canadian DVPO, must be forwarded to law enforcement, which must comply with requirements in the new protection order chapter governing entry of the order criminal justice databases.

Other.

Conforming and technical amendments are made to numerous provisions of the code to update references to provisions repealed by the act. Several sections are amended and recodified into new chapters.

**Appropriation:** None.

**Fiscal Note:** Requested on January 19, 2021.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 72 (definitions), 73 (vulnerable adult protection order proceedings), and 74 (vulnerable adult protection orders ), which take effect January 1, 2022, and sections 131 (powers of guardians) and 173 (definitions under vulnerable adult protection laws), which due to prior delayed effective dates take effect January 1, 2022.