
SUBSTITUTE HOUSE BILL 1560

State of Washington 52nd Legislature 1991 Regular Session

By House Committee on Judiciary (originally sponsored by Representative Appelwick).

Read first time February 6, 1991.

1 AN ACT Relating to court orders; amending RCW 26.50.050, 26.50.070,
2 26.50.090, 10.14.070, 10.14.080, and 10.14.100; adding new sections to
3 chapter 26.50 RCW; and adding new sections to chapter 10.14 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 26.50.050 and 1984 c 263 s 6 are each amended to read
6 as follows:

7 Upon receipt of the petition, the court shall order a hearing which
8 shall be held not later than fourteen days from the date of the order.
9 Except as provided in section 3 of this act, personal service shall be
10 made upon the respondent not less than five court days prior to the
11 hearing. If timely personal service cannot be made, the court may set
12 a new hearing date or issue an order for service by publication and
13 issue an order for protection as provided in sections 3 and 4 of this
14 act.

1 **Sec. 2.** RCW 26.50.070 and 1989 c 411 s 2 are each amended to read
2 as follows:

3 (1) Where an application under this section alleges that
4 irreparable injury could result from domestic violence if an order is
5 not issued immediately without prior notice to the respondent, the
6 court may grant an ex parte temporary order for protection, pending a
7 full hearing, and grant relief as the court deems proper, including an
8 order:

9 (a) Restraining any party from committing acts of domestic
10 violence;

11 (b) Excluding any party from the dwelling shared or from the
12 residence of the other until further order of the court;

13 (c) Restraining any party from interfering with the other's custody
14 of the minor children or from removing the children from the
15 jurisdiction of the court; and

16 (d) Restraining any party from having any contact with the victim
17 of domestic violence or the victim's children or members of the
18 victim's household.

19 (2) Irreparable injury under this section includes but is not
20 limited to situations in which the respondent has recently threatened
21 petitioner with bodily injury or has engaged in acts of domestic
22 violence against the petitioner.

23 (3) The court shall hold an ex parte hearing in person or by
24 telephone on the day the petition is filed or on the following judicial
25 day.

26 (4) Except as provided in section 4 of this act, an ex parte
27 temporary order for protection shall be effective for a fixed period
28 not to exceed fourteen days, but may be reissued. A full hearing, as
29 provided in this chapter, shall be set for not later than fourteen days
30 from the issuance of the temporary order. Except as provided in

1 section 3 of this act, the respondent shall be served with a copy of
2 the ex parte order along with a copy of the petition and notice of the
3 date set for the hearing.

4 NEW SECTION. Sec. 3. A new section is added to chapter 26.50 RCW
5 to read as follows:

6 (1) If the respondent was not personally served with the petition,
7 notice of hearing, and ex parte order before the hearing, the court may
8 reset the hearing and order service by publication instead of personal
9 service under the following circumstances:

10 (a) The sheriff or municipal officer files an affidavit stating
11 that the officer was unable to complete personal service upon the
12 respondent. The affidavit must describe the number and types of
13 attempts the officer made to complete service;

14 (b) The petitioner files an affidavit stating that the petitioner
15 believes that the respondent is hiding from the server to avoid
16 service. The petitioner's affidavit must state the reasons for the
17 belief that the petitioner is avoiding service;

18 (c) The server has deposited a copy of the summons, in
19 substantially the form prescribed in subsection (3) of this section,
20 notice of hearing, and the ex parte order of protection in the post
21 office, directed to the respondent at the respondent's last known
22 address, unless the server states that the server does not know the
23 respondent's address; and

24 (d) The court finds reasonable grounds exist to believe that the
25 respondent is concealing himself or herself to avoid service, and that
26 further attempts to personally serve the respondent would be futile or
27 unduly burdensome.

1 (2) The court may reissue the temporary order of protection not to
2 exceed another fourteen days from the date of reissuing the ex parte
3 protection order and order to provide service by publication.

4 (3) The publication shall be made in a newspaper of general
5 circulation in the county where the petition was brought once a week
6 for two consecutive weeks. The publication of summons shall not be
7 made until the court orders service by publication under this section.
8 Service of the summons shall be considered complete at the expiration
9 of the fourteen days. The summons must be signed by the petitioner.
10 The summons shall contain the date of the first publication, and shall
11 require the respondent upon whom service by publication is desired, to
12 appear and answer the petition within fourteen days from the date of
13 the first publication of the summons. The summons shall also contain
14 a brief statement of the reason for the petition and a summary of the
15 provisions under the ex parte order. The summons shall be essentially
16 in the following form:

17 In the court of the state of Washington for the
18 county of

19, Petitioner
20 vs. No.
21, Respondent

22 The state of Washington to (respondent):

23 You are hereby summoned to appear within fourteen days after the
24 date of the first publication of this summons, that is, within fourteen
25 days after the day of, 19...., and respond to the
26 petition. If you fail to respond, a permanent order of protection will

1 be issued against you for one year from the date you are required to
2 appear, under the provisions of the domestic violence protection act,
3 chapter 26.50 RCW. A temporary order of protection has been issued
4 against you, restraining you from the following: (insert a brief
5 statement of the provisions of the ex parte order). A copy of the
6 petition, notice of hearing, and ex parte order has been filed with the
7 clerk of this court.

8
9 Petitioner

10 NEW SECTION. **Sec. 4.** A new section is added to chapter 26.50 RCW
11 to read as follows:

12 Following completion of service by publication as provided in
13 section 3 of this act, if the respondent fails to appear at the
14 hearing, the court may issue a permanent order of protection extending
15 the provisions of the ex parte order of protection under RCW 26.50.070
16 to one year from the date of the hearing. That order must be served
17 pursuant to RCW 26.50.090, and forwarded to the appropriate law
18 enforcement agency pursuant to RCW 26.50.100.

19 **Sec. 5.** RCW 26.50.090 and 1985 c 303 s 6 are each amended to read
20 as follows:

21 (1) An order issued under this chapter shall be personally served
22 upon the respondent, except as provided in subsections (6) and (8) of
23 this section.

24 (2) The sheriff of the county or the peace officers of the
25 municipality in which the respondent resides shall serve the respondent
26 personally unless the petitioner elects to have the respondent served
27 by a private party.

1 (3) If service by a sheriff or municipal peace officer is to be
2 used, the clerk of the court shall have a copy of any order issued
3 under this chapter forwarded on or before the next judicial day to the
4 appropriate law enforcement agency specified in the order for service
5 upon the respondent. Service of an order issued under this chapter
6 shall take precedence over the service of other documents unless they
7 are of a similar emergency nature.

8 (4) If the sheriff or municipal peace officer cannot complete
9 service upon the respondent within ten days, the sheriff or municipal
10 peace officer shall notify the petitioner. The petitioner shall
11 provide information sufficient to permit notification.

12 (5) Returns of service under this chapter shall be made in
13 accordance with the applicable court rules.

14 (6) If an order entered by the court recites that the respondent
15 appeared in person before the court, the necessity for further service
16 is waived and proof of service of that order is not necessary.

17 (7) Except in cases where the petitioner is granted leave to
18 proceed in forma pauperis, municipal police departments serving
19 documents as required under this chapter may collect the same fees for
20 service and mileage authorized by RCW 36.18.040 to be collected by
21 sheriffs.

22 (8) If the court previously entered an order allowing service of
23 the petition, notice of hearing, and ex parte order by publication,
24 because the court found that the respondent is concealing himself or
25 herself to avoid service, then further attempts to personally serve the
26 order is not necessary, if the court finds that service by publication
27 satisfied the requirement of sections 3 and 4 of this act.

28 **Sec. 6.** RCW 10.14.070 and 1987 c 280 s 7 are each amended to read
29 as follows:

1 Upon receipt of the petition, the court shall order a hearing
2 which shall be held not later than fourteen days from the date of the
3 order. Except as provided in section 8 of this act, personal service
4 shall be made upon the respondent not less than five court days before
5 the hearing. If timely personal service cannot be made, the court may
6 set a new hearing date or issue an order for service by publication and
7 issue an order for protection as provided in sections 8 and 9 of this
8 act.

9 **Sec. 7.** RCW 10.14.080 and 1987 c 280 s 8 are each amended to read
10 as follows:

11 (1) Upon filing a petition for a civil antiharassment protection
12 order under this chapter, the petitioner may obtain an ex parte
13 temporary antiharassment protection order. An ex parte temporary
14 antiharassment protection order may be granted with or without notice
15 upon the filing of an affidavit which, to the satisfaction of the
16 court, shows reasonable proof of unlawful harassment of the petitioner
17 by the respondent and that great or irreparable harm will result to the
18 petitioner if the temporary antiharassment protection order is not
19 granted.

20 (2) Except as provided in section 9 of this act, an ex parte
21 temporary antiharassment protection order shall be effective for a
22 fixed period not to exceed fourteen days, but may be reissued. A full
23 hearing, as provided in this chapter, shall be set for not later than
24 fourteen days from the issuance of the temporary order. Except as
25 provided in section 8 of this act, the respondent shall be personally
26 served with a copy of the ex parte order along with a copy of the
27 petition and notice of the date set for the hearing.

28 (3) At the hearing, if the court finds by a preponderance of the
29 evidence that unlawful harassment exists, a civil antiharassment

1 protection order shall issue prohibiting such unlawful harassment. An
2 order issued under this chapter shall be effective for not more than
3 one year. At any time within the three months before the expiration of
4 the order, the petitioner may apply for a renewal of the order by
5 filing a new petition under this chapter.

6 (4) The court, in granting an ex parte temporary antiharassment
7 protection order or a civil antiharassment protection order, shall have
8 broad discretion to grant such relief as the court deems proper,
9 including an order:

10 (a) Restraining the respondent from making any attempts to contact
11 the petitioner;

12 (b) Restraining the respondent from making any attempts to keep the
13 petitioner under surveillance; and

14 (c) Requiring the respondent to stay a stated distance from the
15 petitioner's residence and workplace.

16 (5) A petitioner may not obtain an ex parte temporary
17 antiharassment protection order against a respondent if the petitioner
18 has previously obtained two such ex parte orders against the same
19 respondent but has failed to obtain the issuance of a civil
20 antiharassment protection order unless good cause for such failure can
21 be shown.

22 NEW SECTION. **Sec. 8.** A new section is added to chapter 10.14 RCW
23 to read as follows:

24 (1) If the respondent was not personally served with the petition,
25 notice of hearing, and ex parte order before the hearing, the court may
26 reset the hearing and order service by publication instead of personal
27 service under the following circumstances:

28 (a) The sheriff or municipal officer files an affidavit stating
29 that the officer was unable to complete personal service upon the

1 respondent. The affidavit must describe the number and types of
2 attempts the officer made to complete service;

3 (b) The petitioner files an affidavit stating that the petitioner
4 believes that the respondent is hiding from the server to avoid
5 service. The petitioner's affidavit must state the reasons for the
6 belief that the petitioner is avoiding service;

7 (c) The server has deposited a copy of the summons, in
8 substantially the form prescribed in subsection (3) of this section,
9 notice of hearing, and the ex parte order of protection in the post
10 office, directed to the respondent at the respondent's last known
11 address, unless the server states that the server does not know the
12 respondent's address; and

13 (d) The court finds reasonable grounds exist to believe that the
14 respondent is concealing himself or herself to avoid service, and that
15 further attempts to personally serve the respondent would be futile or
16 unduly burdensome.

17 (2) The court may reissue the temporary order of protection not to
18 exceed another fourteen days from the date of reissuing the ex parte
19 protection order and order to provide service by publication.

20 (3) The publication shall be made in a newspaper of general
21 circulation in the county where the petition was brought once a week
22 for two consecutive weeks. The publication of summons shall not be
23 made until the court orders service by publication under this section.
24 Service of the summons shall be considered complete at the expiration
25 of the fourteen days. The summons must be signed by the petitioner.
26 The summons shall contain the date of the first publication, and shall
27 require the respondent upon whom service by publication is desired, to
28 appear and answer the petition within fourteen days from the date of
29 the first publication of the summons. The summons shall also contain
30 a brief statement of the reason for the petition and a summary of the

1 provisions under the ex parte order. The summons shall be essentially
2 in the following form:

3 In the court of the state of Washington for the
4 county of

5, Petitioner
6 vs. No.
7, Respondent

8 The state of Washington to (respondent):

9 You are hereby summoned to appear within fourteen days after the
10 date of the first publication of this summons, that is, within fourteen
11 days after the day of, 19...., and respond to the
12 petition. If you fail to respond, a permanent order of protection will
13 be issued against you for one year from the date you are required to
14 appear, under the provisions of the domestic violence protection act,
15 chapter 26.50 RCW. A temporary order of protection has been issued
16 against you, restraining you from the following: (insert a brief
17 statement of the provisions of the ex parte order). A copy of the
18 petition, notice of hearing, and ex parte order has been filed with the
19 clerk of this court.

20
21 Petitioner

22 NEW SECTION. **Sec. 9.** A new section is added to chapter 10.14 RCW
23 to read as follows:

1 Following completion of service by publication as provided in
2 section 8 of this act, if the respondent fails to appear at the
3 hearing, the court may issue a permanent order of protection extending
4 the provisions of the ex parte order of protection under RCW 10.14.080
5 to one year from the date of the hearing. That order must be served
6 pursuant to RCW 10.14.100, and forwarded to the appropriate law
7 enforcement agency pursuant to RCW 10.14.110.

8 **Sec. 10.** RCW 10.14.100 and 1987 c 280 s 10 are each amended to
9 read as follows:

10 (1) An order issued under this chapter shall be personally served
11 upon the respondent, except as provided in subsections (5) and (7) of
12 this section.

13 (2) The sheriff of the county or the peace officers of the
14 municipality in which the respondent resides shall serve the respondent
15 personally unless the petitioner elects to have the respondent served
16 by a private party.

17 (3) If the sheriff or municipal peace officer cannot complete
18 service upon the respondent within ten days, the sheriff or municipal
19 peace officer shall notify the petitioner.

20 (4) Returns of service under this chapter shall be made in
21 accordance with the applicable court rules.

22 (5) If an order entered by the court recites that the respondent
23 appeared in person before the court, the necessity for further service
24 is waived and proof of service of that order is not necessary.

25 (6) Except in cases where the petitioner is granted leave to
26 proceed in forma pauperis, municipal police departments serving
27 documents as required under this chapter may collect the same fees for
28 service and mileage authorized by RCW 36.18.040 to be collected by
29 sheriffs.

1 (7) If the court previously entered an order allowing service of
2 the petition, notice of hearing, and ex parte order by publication,
3 because the court found that the respondent is concealing himself or
4 herself to avoid service, then further attempts to personally serve the
5 order is not necessary, if the court finds that service by publication
6 satisfied the requirement of sections 8 and 9 of this act.

7 NEW SECTION. Sec. 11. A new section is added to chapter 26.50 RCW
8 to read as follows:

9 As an alternative to the fourteen-day time period for personal
10 service provided in RCW 26.50.050, 26.50.070, and section 3 of this
11 act, the superior court or district court, by local rule, may adopt a
12 time period for personal service of twenty-one days.

13 This section shall expire one year after the effective date of this
14 act.

15 NEW SECTION. Sec. 12. A new section is added to chapter 10.14 RCW
16 to read as follows:

17 As an alternative to the fourteen-day time period for personal
18 service provided in RCW 10.14.080, 10.14.100, and section 8 of this
19 act, the superior court or district court, by local rule, may adopt a
20 time period for personal service of twenty-one days.

21 This section shall expire one year after the effective date of this
22 act.