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Court of Appeals  
Division III  
State of Washington  
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No. 37425-4

IN THE COURT OF APPEALS OF  
THE STATE OF WASHINGTON  
DIVISION THREE

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PATRICK BRUCE,  
Appellant,  
V.  
GAIA FONTANARI,  
Respondent.

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ON APPEAL FROM THE SUPERIOR COURT OF  
THE STATE OF WASHINGTON FOR BENTON COUNTY

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BRIEF OF APPELLANT

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## INTRODUCTION

Bruce Patrick and Gia Fontanari met when Ms. Fontanari participated in a foreign exchange student program, in August of 2016. Mr. Patrick and his family were Ms. Fontanari's host family. Ms. Fontanari returned to Mr. Patrick's home to attend college in August 2018. Mr. Patrick and Ms. Fontanari were in an intimate relationship for over a year.

In October, of 2019, Ms. Fontanari ended the relationship and requested a mediation at the Dispute Resolution Center to resolve disputes over financial issues and communication. The parties reached an agreement at mediation. After the parties reached the mediated agreement, Ms. Fontanari filed for a Sexual Assault Protection Order against Mr. Patrick.

The Trial Court entered a Sexual Assault Protection Order against Mr. Patrick. During the hearing, the Trial Court considered a Domestic Violence Protection Order in lieu of a Sexual Assault Protection Order but, ultimately ruled that Ms. Fontanari had met her burden. The Trial Court improperly ordered a Sexual Assault Protection Order against Mr.

Patrick when Ms. Fontanari qualified for a Domestic Violence Protection Order.

Finally, the Trial Court failed to make specific findings of when a relationship began between the parties and when a specific instance of nonconsensual sexual conduct occurred. The Trial Court instead focused on the age difference between the parties and therefore abused its discretion in determining that Ms. Fontanari met her burden for relief under a Sexual Assault Protection Order.

#### ASSIGNMENTS OF ERROR

1. The Trial Court erred when it entered a Sexual Assault Protection order when the parties' intimate relationship required a Domestic Violence Protection Order.
2. The Trial Court abused its discretion by finding by that Ms. Fontanari had met her burden for a Sexual Assault Protection Order without making specific findings.

ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Whether the Trial Court erred in interpreting the plain meaning of RCW 7.90.030 by entering a Sexual Assault Protection Order when the parties were in an intimate relationship and qualified for a Domestic Violence Protection Order.
2. The Trial Court failed to make findings of specific nonconsensual sexual conduct, instead it focused on the age gap between the parties.

STATEMENT OF THE CASE

Appellant, Bruce Patrick, and his family have hosted several foreign exchange students over the years. CP 30. In August of 2016, Patrick met Respondent, Gaia Fontanari, when his family began hosting Ms. Fontanari as an exchange student for 9-months. CP 4, 23, 30. During Ms. Fontanari's time as an exchange student, Mr. Patrick's family became fond of Ms. Fontanari, thought of her as family, and offered to fund her college, which she gladly accepted. CP 30.

At the end of Ms. Fontanari's exchange student program, in June of 2017, she went home to Italy to be with her family and finish high school, with plans to return in August 2018 for college. CP 31. A year

after being in Italy, during the summer of 2018, Mr. Patrick visited Ms. Fontanari, at her request in Italy to meet Ms. Fontanari's parents and accompany her back to the states to begin college. *Id.* After Ms. Fontanari's return to Mr. Patrick's home, Mr. Patrick and Ms. Fontanari agreed to start an intimate relationship. *Id.*

Unfortunately, after the intimate relationship began, Ms. Fontanari started being controlling and abusive to the Patrick family. CP 23, 31. Mr. Patrick and his family still provided for Ms. Fontanari, which included a car, health insurance, access to bank accounts, and even adding Ms. Fontanari as a beneficiary to Mr. Patrick's 401K and life insurance policies. CP 31. The relationship continued until Ms. Fontanari broke up with Mr. Patrick in October 2019, due to being in another relationship with another man. CP 4, 24, 31.

After Ms. Fontanari ended the relationship, Mr. Patrick tried to get Ms. Fontanari to move out of his family home, yet she refused. CP 4, 25, 31. Patrick also had a lapse in judgment after Ms. Fontanari ended the relationship and threatened to commit suicide in front of Ms. Fontanari and Deanna Patrick. CP 4, 25, 31. Mr. Patrick realized that it was not the

right decision. CP 31. According to Mr. Patrick at no time did he directly threaten Ms. Fontanari with violence. CP 25, 31; RP 14:22-25.

In mid-October 2019, Ms. Fontanari moved out of Mr. Patrick's home. CP 4, 25, 31. At Ms. Fontanari's request, the parties attended a mediation at the Dispute Resolution Center on November 7, 2019. CP 32, 58. The parties reached an agreement in regard to the disputes involving finances, personal possessions, and communication between the parties. CP 51-53.

On November 19, 2019, Gaia Fontanari filed a Petition for Sexual Assault Protection Order. CP 1-5. The Court entered a Temporary Sexual Assault Protection Order and Notice of Hearing. CP 9-11. Bruce Patrick was served with the temporary order on November 20, 2019. CP 12-13. The November 27, 2019, hearing was continued, and the temporary order reissued twice with the hearing taking place on January 24, 2020. CP 15-19.

During the January 24, 2020 hearing the court entertained the idea of a Domestic Violence Protection Order. However, the Court could not, "overlook [Patrick's] poor decision to enter into the relationship ...[given]

the maturity gap with respect to [Mr. Patrick] and to [Ms. Fontanari]” RP 24:22-23; and found that she had met the burden for a Sexual Assault Protection Order. The court findings were that sexual contact occurred, it was nonconsensual, and it was power and control. The Court entered a 1-year Sexual Assault Protection Order against Bruce Patrick.

### ARGUMENT

**1. The Trial Court erred when it entered a Sexual Assault Protection order when the parties’ intimate relationship required a Domestic Violence Protection Order.**

“We review the trial court's decision to grant or deny a protection order for abuse of discretion and determine if the decision is manifestly unreasonable or exercised on untenable grounds. A decision is based on untenable grounds or for untenable reasons if the trial court applies the wrong legal standard or relies on unsupported facts. While we defer to the trial court on the persuasiveness of the evidence, witness credibility and conflicting testimony, we review questions of law de novo. We review questions of statutory interpretation de novo.” *Nelson v. Duvall*, 197 Wash. App. 441, 451–52, 387 P.3d 1158, 1164 (2017); (citing *In re Vulnerable Adult Petition for Knight*, 178 Wash. App. 929, 936-37, 317 P.3d 1068 (2014); *Salas v. Hi-Tech Erectors*, 168 Wash.2d 664, 669, 230

P.3d 583 (2010); and *Pham v. Corbett*, 187 Wash. App. 816, 831, 351 P.3d 214 (2015)).

A. Whether the Trial Court erred in interpreting the plain meaning of RCW 7.90.030 by entering a Sexual Assault Protection Order when the parties were in an intimate relationship and qualified for a Domestic Violence Protection Order.

In 2006, the Washington State Legislature created the Sexual Assault Protection Order Act (SAPOA), chapter 7.90 RCW, with the intent of creating civil remedy allowing a victim of sexual assault to obtain a protection order against future interactions with their assailant. *Final Bill Report SHB 2576*, 59th Legislature, Reg. Sess., 1-3 (Wa. 2006). To obtain a sexual assault protection order, the petitioner must allege, and the Court must find, that the sexual conduct or penetration was “nonconsensual”—in other words, that the petitioner did not consent. “Nonconsensual” is defined by SAPOA to mean “a lack of freely given agreement.” RCW 7.90.010(1). *Nelson*, 197 Wash. App. at 444. A victim of sexual assault may petition for a protection order against the offender regardless of whether there is a pending lawsuit, complaint, petition, or other action between the parties. RCW 7.90.020(2). *State v. Navarro*, 188 Wash. App. 550, 553, 354 P.3d 22, 24 (2015).

The plain language of RCW 7.90.030 states the following:

**Petition—Who may file.**

(1) A petition for a sexual assault protection order may be filed by a person:

(a) Who does not qualify for a protection order under chapter 26.50 RCW and who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, including a single incident of nonconsensual sexual conduct or nonconsensual sexual penetration; or

(b) On behalf of any of the following persons who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration and who does not qualify for a protection order under chapter 26.50 RCW:

(i) A minor child;

(ii) A vulnerable adult as defined in RCW 74.34.020 or \* 74.34.021; or

(iii) Any other adult who, because of age, disability, health, or inaccessibility, cannot file the petition.

The pertinent part of the statute, in this case, is 7.90.030(1)(a).

When interpreting the statute, we turn to statutory interpretation, and when the meaning of statutory language is plain, the only permissible interpretation is that which gives effect to the plain language. *State v. Keller*, 143 Wash.2d 267, 276, 19 P.3d 1030 (2001). Only if a statute is ambiguous do we resort to canons of statutory construction to sort out its

meaning. of the plain meaning rule provides the better approach because it is more likely to carry out legislative intent. Of course, if, after this inquiry, the statute remains susceptible to more than one reasonable meaning, the statute is ambiguous and it is appropriate to resort to aids to construction, including legislative history. *State, Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wash. 2d 1, 12, 43 P.3d 4, 10 (2002). (*citations omitted*).

The court's primary objective in interpreting a statute is to ascertain and carry out the legislature's intent. *Nelson*, 197 Wash. App. at 452. (*quoting Lake v. Woodcreek Homeowners Ass'n*, 169 Wash.2d 516, 526, 243 P.3d 1283 (2010)). After the enactment of statutes 7.90.005 and 7.90.030(1)(a). In 2007, the Legislature passed Substitute House Bill 1555 which included specific additions to statutes 7.90.005 and 7.90.030(1)(a). *Final Bill Report SHB 1555*, 60th Legislature, Reg. Sess., 1-2 (Wa. 2007).

SHB 1555 specifically added, "It is the intent of the legislature that the sexual assault protection order created by this chapter be a remedy for victims who do not qualify for a domestic violence order of protection." to statute 7.90.005. SHB 1555, at 1. The Senate Bill Report for the March 23, 2007 Senate Committee on Judiciary analyzed that

public testimony was provided showing, “We want to ensure that these victims who qualify first seek a domestic violence protection order, because there are provisions in there that would better meet their needs.” *Senate Bill Report SHB. 1555*, 60th Legislature, Reg Sess., 2 (2007).

In this case, Mr. Patrick disputes whether sexual conduct was nonconsensual. However, this analysis rests on whether the correct protection order was ordered. The statute in plain language allows for a petition for a sexual protection order under 7.90.030(1)(a) when the alleged victim does not qualify under RCW 26.50 and is a victim of sexual conduct or penetration. The RCW specifically has its own chapter for Domestic Violence Prevention under 26.50. Under this chapter, a petition exists for a protection order in cases of domestic violence. RCW 26.50.030. Any person who is alleging that she is the victim of domestic violence may apply. RCW 26.50.20(1)(a).

Domestic violence, as defined by RCW 26.50.010(3) is:

(a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, sexual assault, or stalking as defined in RCW 9A.46.110 of one intimate partner by another intimate partner; or

(b) physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, sexual assault, or stalking as defined in RCW 9A.46.110 of

one family or household member by another family or household member.”

Here, Ms. Fontanari admits in her sexual protection petition that she was in a relationship with Mr. Patrick. CP 4. She goes on to state that she broke up with Mr. Patrick in October of 2019. *Id.* In her response brief she maintains that that relationship lasted over a year. CP 55. Deanna Patrick, Mr. Patrick’s estranged wife also states that during Ms. Fontanari’s first year in college she began an intimate relationship with her husband. CP 24. Mr. Patrick maintained that there was a consensual intimate relationship. CP 31. This consensual intimate relationship was shown through messages back and forth that included “Love you” and “Love you too” exchanged between Mr. Patrick and Ms. Fontanari. CP 35. Lastly, Ms. Fontanari states in her petition that Mr. Patrick wanted her to move out when he found out she had a new boyfriend after breaking up with him. CP 4.

These facts help determine whether Ms. Fontanari qualified for a domestic violence protection order under chapter RCW 26.50. Based on the definition of domestic violence provided in RCW 26.50.010(3), Ms. Fontanari is both an intimate partner and family household member. Thus,

the sexual protection order was not the appropriate protection in this case. That statute requires no further analysis of consensual or nonconsensual when there is a remedy under the Domestic Violence Prevention Chapter 26.50.

The language specifically added to 7.90.030(1)(a), of “Who does not qualify for a protection order under chapter 26.50 RCW and,” plainly shows that the Legislative intent was to ensure that only those who do not qualify for a DVPO under chapter 26.50 RCW would be provided relief under 7.90.030(1)(a). *SBH 1555*, at 2. Ms. Fontanari qualified for a DVPO under chapter 26.50 RCW and therefore did not qualify for relief under 7.90.030(1)(a).

**2. The Trial Court abused its discretion by finding by that Ms. Fontanari had met her burden for a Sexual Assault Protection Order without making specific findings.**

A trial court “abuses its discretion when it acts on untenable grounds or its ruling is manifestly unreasonable.” *State v. Gaines*, 194 Wash. App. 892, 896, 380 P.3d 540 (2016). A “decision is based ‘on untenable grounds’ or made ‘for untenable reasons’ if it rests on facts

unsupported in the record or was reached by applying the wrong legal standard.” *State v. Rohrich*, 149 Wash.2d 647, 654, 71 P.3d 638 (2003) (quoting *State v. Rundquist*, 79 Wash. App. 786, 793, 905 P.2d 922 (1995)). A “decision is ‘manifestly unreasonable’ if the court, despite applying the correct legal standard to the supported facts, adopts a view ‘that no reasonable person would take,’ and arrives at a decision ‘outside the range of acceptable choices.’” *Rohrich*, 149 Wash.2d at 654 (citation omitted), 71 P.3d 638 (quoting *State v. Lewis*, 115 Wash.2d 294, 298-99, 797 P.2d 1141 (1990); *Rundquist*, 79 Wash. App. at 793, 905 P.2d 922); *State v. Arndt*, 426 P.3d 804, 808 (Wash. Ct. App. 2018), review denied, 192 Wash. 2d 1013, 432 P.3d 783 (2019)

A. The Trial Court failed to make findings of specific nonconsensual sexual conduct, instead it focused on the age gap between the parties.

When considering whether the Trial Court abused its discretion the SAPO requirements for a petition give guidance on what a court should consider. A petition for relief shall allege the existence of nonconsensual sexual conduct or nonconsensual sexual penetration, and shall be accompanied by an affidavit made under oath stating the *specific*

*facts and circumstances* (emphasis added) from which relief is sought. RCW 7.90.020. A single incident of nonconsensual conduct or nonconsensual sexual penetration is enough to seek relief. Nonconsensual is defined to mean “a lack of freely given agreement.” RCW 7.90.010(1) (emphasis added). *Nelson*, 197 Wash. App. at 454.

In this case, Mr. Patrick freely admitted that there was a sexual relationship with Ms. Fontanari. This sexual relationship was referenced in his estranged wife’s declaration and reinforced on the record to the trial court RP 13:18-20. Ms. Fontanari’s petition stated that when she was seventeen, in 2016, she was manipulated into having sex with Mr. Patrick. CP 4. However, Mr. Patrick stated that the consensual sexual conduct occurred after she returned from Italy to live with him in August of 2018; that is when a consensual intimate relationship began. CP 31. The Trial Court did not make a finding on when the sexual contact or the relationship occurred and it ignored the overwhelming evidence that there was a consensual relationship for a year and a half. The Court instead stated, “I’m not getting into the other issues prior to 18 or after 18, I’m just--there’s--he concedes, it’s a sexual contact.” CP 13-14:24-1. The legislature required specific facts and circumstances in RCW 7.90.020 in

order for relief. The specific facts and circumstances according to Ms. Fontanari occurred before she was 18. Yet, the Trial Court chose not to give weight to that fact.

The Trial Court went on to say that “The law, as I indicated with respect to the sexual assault, deals with consent or non-consent with respect to this protection order”. RP 24:13-15. Mr. Patrick does not dispute whether SAPOA deals with consent or non-consent. Rather than focus on when the nonconsensual conduct occurred between Mr. Patrick and Ms. Fontanari the Trial Court focused on Mr. Patrick’s age.

When examining the Trial Court's findings, it implies that an age gap between the two is the reason for finding that Ms. Fontanari could not consent, and that age gap was the reason Mr. Patrick had more power. The Trial Court stated “However, sir, I cannot overlook your poor decision to enter into the relationship with this person, given it may sound a little difficult, but the only thing that I can say, sir -- the maturity gap with respect to you and to her. RP 24:19-23. Mr. Patrick is 52, and Ms. Fontanari was 20 when the couple ended their relationship in 2019. Mr. Patrick maintains that their age gap of 30 years is irrelevant in the ultimate

fact of whether there was nonconsensual conduct or penetration. The Trial Court subsequently made the following finding:

“It’s more likely than not that there has been a sexual contact. It is supported by your wife in the declaration that there was sexual contact. It’s clear that I don’t know when it started and I don’t need to make that finding. I can make the finding that based on her [Fontanari’s] testimony, that it is non-consensual and it was a power and control. And, therefore, the Court was going to entertain a domestic violence protection order, however, the Petitioner has met the burden. And, therefore, the Court will grant the request.” RP 25:1-10.

In making this finding, the Trial Court makes findings based on untenable reasons. It admits that it does not know when the sexual conduct occurred between the couple. Additionally, it ignores the fact that Mr. Patrick and Ms. Fontanari were in an undisputed intimate relationship. The Trial Court essentially makes a blanket finding that any sexual contact between the couple was non-consensual. This was unsupported in the record. Mr. Patrick talked of walks in the park for a day date, followed by dinner, snuggling and making love. CP 42. Ms. Fontanari responded

saying “That really sounds great, when do you a day off” CP 42. Mr. Patrick would say things such as “Love you and thank for last night. It means a lot to me always my love”; Ms Fontanari responded with a heart emoji. CP 37. Even their break up text messages show two people going through the new pains of separation. See CP 43.

Finally, the Trial Court acknowledges there were matters that could show light on their relationship, mainly a dispute resolution agreement to separate assets. The Trial Court Stated “It may provide the Court a background of how the relationship begun or what the relationship was to support the -- or to support or not support the consensual sexual contact between the Petitioner and the Respondent and the Court has already made that finding -- I’m finding she met her burden” RP 26:21-25, RP 27:1. Here the court acknowledges that there was a relationship between Mr. Patrick and Ms. Fontanari but refuses to acknowledge the consensual relationship even with a dispute resolution agreement separating their once shared assets.

The Trial Court did not consider the civil dispute because it had already made its findings. Mr. Patrick maintains the text messages, the breakup, and subsequent civil dispute resolution shows that there was a

bona fide relationship. Ms. Fontanari does not refute that there was a bona-fide relationship. Therefore, if Mr. Patrick and Ms. Fontanari were in a bona-fied relationship the Trial Court cannot make a blanket finding that their entire relationship was about “power and control”, that is unsupported by facts. The Trial Court must find at least one sexual act that is nonconsensual supported by facts and circumstances. By not determining when this act occurred, the Trial Court supports a position that a reasonable person would not take. Therefore, the Trial Court abused its discretion.

#### CONCLUSION

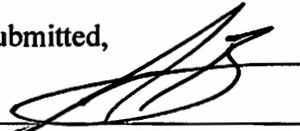
Mr. Patrick is not asking this Court to make factual findings. He understands that those fall well outside the purview of an appellate court. It is well established that factual determinations—particularly those that rely upon the credibility of live witnesses—are squarely within the province of the trial court. *Bartel v. Zuckriegel*, 112 Wn. App. 55, 62, 47 P.3d 581 (2002). However, Mr. Patrick is asking this Court to clarify the analysis required in ordering a sexual assault protection order under RCW 7.90. A SAPO can have grave implications as it did in this case, it cost Mr. Patrick his livelihood as a nuclear engineer. In the interest of Justice, a Trial Court should identify the sexual

act with specificity that it is providing relief for. While Mr. Patrick's age could be a factor under certain circumstances the Court gave undue weight to this factor. Additionally, by not making a finding for when this act occurred it essentially relied on any sexual act between Mr. Patrick and Ms. Fontanari, and that is unsupported by fact.

Mr. Patrick's second argument illustrates the difficulties a trial court can have when finding nonconsensual sexual conduct when there are facts that support an intimate relationship. This is why the legislature states that a domestic violence order should be issued when a person qualifies under RCW 26.50 rather than a SAPO.

DATED this 18<sup>th</sup> day of June 2020.

Respectfully submitted,



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## Final Bill Report SHB 1555

### **FINAL BILL REPORT SHB 1555**

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**C 212 L 07**  
**Synopsis as Enacted**

**Brief Description:** Addressing sexual assault protection orders.

**Sponsors:** By House Committee on Judiciary (originally sponsored by Representatives Williams, Rodne, Lantz, Chase and Ericks).

**House Committee on Judiciary**  
**Senate Committee on Judiciary**

**Background:**

In 2006 the Legislature established a new civil protection order called the sexual assault protection order. Any person who is a victim of nonconsensual sexual conduct or penetration that gives rise to a reasonable fear of future dangerous acts may file a petition for a sexual assault protection order.

A domestic violence protection order is a civil remedy when there has been domestic violence between family or household members. Family or household members include current and former spouses, persons who have a child in common, adults who have in the past or are currently residing together, persons 16 years of age or older who have in the past or currently have a dating relationship with a person 16 years of age or older, persons who have a biological or legal parent/child relationship, including stepparents, stepchildren, grandparents, and grandchildren.

**Summary:**

Language is added to explicitly state that a sexual assault protection order is a remedy for victims who do not qualify for a domestic violence protection order.

**Votes on Final Passage:**

House	97	0
Senate	48	0

**Effective:** July 22, 2007

## Senate Bill Report SHB 1555

### **SENATE BILL REPORT SHB 1555**

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As Reported By Senate Committee On:  
Judiciary, March 23, 2007

**Title:** An act relating to sexual assault protection orders.

**Brief Description:** Addressing sexual assault protection orders.

**Sponsors:** House Committee on Judiciary (originally sponsored by Representatives Williams, Rodne, Lantz, Chase and Ericks).

**Brief History:** Passed House: 2/28/07, 97-0.

**Committee Activity:** Judiciary: 3/20/07, 3/23/07 [DP].

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#### **SENATE COMMITTEE ON JUDICIARY**

**Majority Report:** Do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; Carrell, Hargrove, Roach and Weinstein.

**Staff:** Dawn Noel (786-7472)

**Background:** Last year, the Legislature established a new civil protection order called the sexual assault protection order. Any person who is a victim of nonconsensual sexual conduct or penetration that gives rise to a reasonable fear of future dangerous acts may file a petition for a sexual assault protection order. Sexual conduct includes, among other acts, the intentional or knowing touching or forced touching, or the display or forced display of certain intimate body parts.

A domestic violence protection order is a civil remedy when there has been domestic violence between family or household members. Domestic violence means: (1) physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, between family and household members; (2) sexual assault of one family or household member by another; or (3) stalking of one family or household member by another family or household member.

Family or household members include current and former spouses; persons who have a child in common; adults who have in the past resided together or are currently residing together; persons 16 years of age or older who have in the past or currently have a dating relationship with a person 16 years of age or older; persons who have a biological or legal parent/child relationship, including stepparents, stepchildren, grandparents, and grandchildren.

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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.*

**Summary of Substitute Bill:** Language is added to explicitly state that a sexual assault protection order is a remedy for victims who do not qualify for a domestic violence protection order.

**Appropriation:** Nonc.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: A sexual assault protection order is a specific remedy for a certain band of victims who need it most. There are situations in which someone who has been in a domestic relationship is a victim of sexual assault. We want to ensure that those victims who qualify first seek a domestic violence protection order, because there are provisions in there that would better meet their needs, like what to do with custody arrangements for children. This is a technical fix.

**Persons Testifying:** PRO: Christi Hurt, Washington Coalition of Sexual Assault Programs.

## Final Bill Report SHB 2576

### **FINAL BILL REPORT SHB 2576**

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C 138 L 06  
Synopsis as Enacted

**Brief Description:** Creating sexual assault protection orders.

**Sponsors:** By House Committee on Judiciary (originally sponsored by Representatives Williams, Green, O'Brien, Kirby, Hunt, Ericks, Simpson, Lovick, McCoy, Lantz, Ormsby, Springer and Conway).

**House Committee on Judiciary**  
**Senate Committee on Judiciary**

**Background:**

There are several types of orders a court may grant that restrict a person's ability to have contact with another person. Although there is potential overlap, the orders generally differ in who they apply to and in what context. For example, no-contact orders are available in criminal proceedings and may be imposed as a condition of release or sentence. Domestic violence protection orders are civil orders and apply to victims of domestic violence committed by family or household members, including persons in dating relationships. Anti-harassment orders are civil orders and may be obtained by a person who is the victim of ongoing conduct that is considered seriously annoying, alarming, or harassing.

For domestic violence protection orders, the superior, district, and municipal court jurisdiction all have jurisdiction to issue an order. However, district and municipal courts is limited under certain circumstances, such as when the superior court has a pending family law action involving the parties.

Generally, it is a gross misdemeanor if the person to be restrained knows of the order and violates certain restraint provisions in the order. However, a violation may be a class C felony under certain circumstances, such as if the person violating the order has two prior convictions for violations.

**Summary:**

A new civil order is created called the sexual assault protection order (SAPO).

**Filing a Petition**

A person who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, including a single incident, may file a petition for a SAPO. A third party may file on behalf of a victim who is a minor child, a vulnerable adult, or any other adult who cannot file the petition due to age, disability, health, or inaccessibility. A person 16 years old or older may file a petition on his or her own behalf. The court need not appoint a guardian or guardian ad litem on behalf of a respondent who is 16 years old or older.

The petition must be accompanied by an affidavit stating specific statements or actions made at the time of the sexual assault or subsequently thereafter that give rise to a reasonable fear of future dangerous acts.

The petitioner must file the action in the county or municipality where the petitioner resides. Jurisdiction over these orders is the same as court jurisdiction over domestic violence protection orders. No filing fee may be charged.

Service of Process and Hearings

Upon receipt of the petition, the court must order a hearing no later than 14 days from the date of the order. Personal service must be made upon the respondent not less than five court days before the hearing. If timely personal service cannot be made, the court must set a new hearing date and require additional service attempts.

The court may order a hearing by telephone to accommodate a disability or, in exceptional circumstances, to protect a petitioner. The court may appoint counsel to represent the petitioner if the respondent is represented by counsel.

Procedures are established regarding the admissibility of evidence regarding the petitioner's prior sexual activity or reputation.

Ex Parte Temporary Orders and Final Orders

If the court finds by a preponderance of the evidence that the petitioner has been a victim of nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent, the court shall issue a SAPO.

To obtain an ex parte temporary SAPO, the petitioner must show that there is good cause to grant the remedy, regardless of prior service of process or notice upon the respondent because the harm which the order is intended to prevent would likely occur if the respondent were given any prior notice or greater notice than was actually given. An ex parte temporary SAPO order is effective for a fixed period not to exceed 14 days. A full hearing must be set within that 14 day period.

Generally, a final SAPO is effective for a fixed period of time not to exceed two years. However, the duration of an order may vary when entered in conjunction with a criminal proceeding. The order may be extended one or more times.

Relief Granted in the Order

The court may prohibit the respondent from having any contact, including nonphysical contact, with the petitioner directly, indirectly, or through third parties. The court must consider certain factors in cases where the petitioner and respondent are under the age of 18 and attend the same elementary, middle, or high school.

A petitioner shall not be denied a SAPO because the petitioner is a minor or because the petitioner did not report the assault to law enforcement. The court may not require proof of physical injury. In addition, the court may not deny relief based on evidence that the

respondent or the petitioner was voluntarily intoxicated or evidence that the petitioner engaged in limited consensual sexual touching.

Other Provisions

Violations of a SAPO are punishable under the penalty provision governing domestic violence protection orders. Various statutes that recognize domestic violence protection orders are amended to include sexual assault protection orders.

An ex parte temporary order is not admissible in a subsequent civil action for damages arising from the conduct alleged in the petition or order.

"Sexual conduct," "sexual penetration," and "nonconsensual" are defined. Other provisions are established, including provisions for keeping a petitioner's addresses confidential in court filings, modifying the terms of an order, establishing the role of sexual assault victim advocates, and requiring that, by September 1, 2006, the Administrative Office of the Court create standardized forms and informational brochures for sexual assault protection orders.

**Votes on Final Passage:**

House	97	0	
Senate	47	0	(Senate amended)

House Refuses to Concur			
Senate			(Senate receded)
Senate	45	0	(Senate amended)
House	98	0	(House concurred)

Effective: June 7, 2006

## RELEVANT STATUTES, RULES, AND REGULATIONS

### **RCW 7.90.005**

Legislative declaration.

Sexual assault is the most heinous crime against another person short of murder. Sexual assault inflicts humiliation, degradation, and terror on victims. According to the FBI, a woman is raped every six minutes in the United States. Rape is recognized as the most underreported crime; estimates suggest that only one in seven rapes is reported to authorities. Victims who do not report the crime still desire safety and protection from future interactions with the offender. Some cases in which the rape is reported are not prosecuted. In these situations, the victim should be able to seek a civil remedy requiring that the offender stay away from the victim. It is the intent of the legislature that the sexual assault protection order created by this chapter be a remedy for victims who do not qualify for a domestic violence order of protection.

### **RCW 7.90.010**

#### Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Nonconsensual" means a lack of freely given agreement.
- (2) "Petitioner" means any named petitioner for the sexual assault protection order or any named victim of nonconsensual sexual conduct or nonconsensual sexual penetration on whose behalf the petition is brought.
- (3) "Sexual assault protection order" means an ex parte temporary order or a final order granted under this chapter, which includes a remedy authorized by RCW 7.90.090.
- (4) "Sexual conduct" means any of the following:
  - (a) Any intentional or knowing touching or fondling of the genitals, anus, or breasts, directly or indirectly, including through clothing;
  - (b) Any intentional or knowing display of the genitals, anus, or breasts for the purposes of arousal or sexual gratification of the respondent;

(c) Any intentional or knowing touching or fondling of the genitals, anus, or breasts, directly or indirectly, including through clothing, that the petitioner is forced to perform by another person or the respondent;

(d) Any forced display of the petitioner's genitals, anus, or breasts for the purposes of arousal or sexual gratification of the respondent or others;

(e) Any intentional or knowing touching of the clothed or unclothed body of a child under the age of thirteen, if done for the purpose of sexual gratification or arousal of the respondent or others; and

(f) Any coerced or forced touching or fondling by a child under the age of thirteen, directly or indirectly, including through clothing, of the genitals, anus, or breasts of the respondent or others.

(5) "Sexual penetration" means any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person, including but not limited to cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.

(6) "Nonphysical contact" includes, but is not limited to, telephone calls, mail, email, fax, and written notes.

#### **RCW 7.90.020**

#### **Petition for a sexual assault protection order—Creation—Contents—Administration.**

There shall exist an action known as a petition for a sexual assault protection order.

(1) A petition for relief shall allege the existence of nonconsensual sexual conduct or nonconsensual sexual penetration, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought. Petitioner and respondent shall disclose the existence of any other litigation or of any other restraining, protection, or no-contact orders between the parties.

(2) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.

(3) Within ninety days of receipt of the master copy from the administrative office of the courts, all court clerk's offices shall make available the standardized forms, instructions, and informational brochures required by RCW 7.90.180 and shall fill in and keep current specific program names and telephone numbers for community resources. Any assistance or information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.

(4) Forms and instructional brochures and the necessary number of certified copies shall be provided free of charge.

(5) A person is not required to post a bond to obtain relief in any proceeding under this section.

(6) If the petition states that disclosure of the petitioner's address would risk abuse of the petitioner or any member of the petitioner's family or household, that address may be omitted from all documents filed with the court. If the petitioner has not disclosed an address under this subsection, the petitioner shall designate an alternative address at which the respondent may serve notice of any motions.

### **RCW 7.90.030**

#### **Petition—Who may file.**

(1) A petition for a sexual assault protection order may be filed by a person:

(a) Who does not qualify for a protection order under chapter 26.50 RCW and who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, including a single incident of nonconsensual sexual conduct or nonconsensual sexual penetration; or

(b) On behalf of any of the following persons who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration and who does not qualify for a protection order under chapter 26.50 RCW:

(i) A minor child;

(ii) A vulnerable adult as defined in RCW 74.34.020 or \* 74.34.021; or

(iii) Any other adult who, because of age, disability, health, or inaccessibility, cannot file the petition.

## **RCW 26.50.010**

### **Definitions.**

As used in this chapter, the following terms shall have the meanings given them:

- (1) "Court" includes the superior, district, and municipal courts of the state of Washington.
- (2) "Dating relationship" means a social relationship of a romantic nature. Factors that the court may consider in making this determination include:
  - (a) The length of time the relationship has existed;
  - (b) the nature of the relationship; and
  - (c) the frequency of interaction between the parties.
- (3) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, sexual assault, or stalking as defined in RCW 9A.46.110 of one intimate partner by another intimate partner; or (b) physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, sexual assault, or stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.
- (4) "Electronic monitoring" has the same meaning as in RCW 9.94A.030.
- (5) "Essential personal effects" means those items necessary for a person's immediate health, welfare, and livelihood. "Essential personal effects" includes but is not limited to clothing, cribs, bedding, documents, medications, and personal hygiene items.
- (6) "Family or household members" means: (a) Adult persons related by blood or marriage; (b) adult persons who are presently residing together or who have resided together in the past; and (c) persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.
- (7) "Intimate partner" means: (a) Spouses, or domestic partners; (b) former spouses, or former domestic partners; (c) persons who have a child in common regardless of whether they have been married or have lived together at any time; (d) adult persons presently or previously residing together who have or have had a dating relationship; (e) persons sixteen years of age or older who are presently residing together or who have

resided together in the past and who have or have had a dating relationship; and (f) persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship.

(8) "Judicial day" does not include Saturdays, Sundays, or legal holidays.

#### **RCW 26.50.020**

##### **Commencement of action—Jurisdiction—Venue.**

(1)(a) Any person may seek relief under this chapter by filing a petition with a court alleging that the person has been the victim of domestic violence committed by the respondent. The person may petition for relief on behalf of himself or herself and on behalf of minor family or household members.

(b) Any person thirteen years of age or older may seek relief under this chapter by filing a petition with a court alleging that he or she has been the victim of violence in a dating relationship and the respondent is sixteen years of age or older.

(2)(a) A person under eighteen years of age who is sixteen years of age or older may seek relief under this chapter and is not required to seek relief by a guardian or next friend.

(b) A person under sixteen years of age who is seeking relief under subsection (1)(b) of this section is required to seek relief by a parent, guardian, guardian ad litem, or next friend.

(3) No guardian or guardian ad litem need be appointed on behalf of a respondent to an action under this chapter who is under eighteen years of age if such respondent is sixteen years of age or older.

(4) The court may, if it deems necessary, appoint a guardian ad litem for a petitioner or respondent who is a party to an action under this chapter.

(5) Any petition filed under this chapter must specify whether the victim and respondent of the alleged domestic violence are intimate partners or family or household members within the meaning of RCW 26.50.010.

(6) The courts defined in RCW 26.50.010 have jurisdiction over proceedings under this chapter. The jurisdiction of district and municipal courts under this chapter shall be limited to enforcement of RCW 26.50.110(1), or the equivalent municipal ordinance, and the issuance and

enforcement of temporary orders for protection provided for in RCW 26.50.070 if: (a) A superior court has exercised or is exercising jurisdiction over a proceeding under this title or chapter 13.34 RCW involving the parties; (b) the petition for relief under this chapter presents issues of residential schedule of and contact with children of the parties; or (c) the petition for relief under this chapter requests the court to exclude a party from the dwelling which the parties share. When the jurisdiction of a district or municipal court is limited to the issuance and enforcement of a temporary order, the district or municipal court shall set the full hearing provided for in RCW 26.50.050 in superior court and transfer the case. If the notice and order are not served on the respondent in time for the full hearing, the issuing court shall have concurrent jurisdiction with the superior court to extend the order for protection.

(7) An action under this chapter shall be filed in the county or the municipality where the petitioner resides, unless the petitioner has left the residence or household to avoid abuse. In that case, the petitioner may bring an action in the county or municipality of the previous or the new household or residence.

(8) A person's right to petition for relief under this chapter is not affected by the person leaving the residence or household to avoid abuse.

(9) For the purposes of this section "next friend" means any competent individual, over eighteen years of age, chosen by the minor and who is capable of pursuing the minor's stated interest in the action.

#### **RCW 26.50.030**

#### **Petition for an order for protection—Availability of forms and informational brochures—Bond not required.**

There shall exist an action known as a petition for an order for protection in cases of domestic violence.

(1) A petition for relief shall allege the existence of domestic violence, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought. Petitioner and respondent shall disclose the existence of any other litigation concerning the custody or residential placement of a child of the parties as set forth in RCW 26.27.281 and the existence of any other restraining, protection, or no-contact orders between the parties.

(2) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties except in cases where the court realigns petitioner and respondent in accordance with RCW 26.50.060(4).

(3) Within ninety days of receipt of the master copy from the administrative office of the courts, all court clerk's offices shall make available the standardized forms, instructions, and informational brochures required by RCW 26.50.035 and shall fill in and keep current specific program names and telephone numbers for community resources. Any assistance or information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.

(4) No filing fee may be charged for proceedings under this section. Forms and instructional brochures shall be provided free of charge.

(5) A person is not required to post a bond to obtain relief in any proceeding under this section.

**BETANCOURT LAW, PLLC**

**June 18, 2020 - 1:28 PM**

**Transmittal Information**

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