

SS#2 SCS SB 320 -- DOMESTIC VIOLENCE

SPONSOR: Lamping (Diehl)

COMMITTEE ACTION: Voted "do pass" by the Committee on Crime Prevention and Public Safety by a vote of 12 to 0.

This substitute changes the laws regarding domestic violence and orders of protection. In its main provisions, the substitute:

(1) Specifies that the juvenile court or family court will have exclusive original jurisdiction in a proceeding involving an order of protection when the respondent is younger than 17 years of age;

(2) Revises the definition of "abuse" to specify that it does not include abuse inflicted on a child by accidental means by an adult household member or discipline of a child, including spanking, in a reasonable manner;

(3) Revises the definition of "harassment" to include a child;

(4) Defines "child" as any person younger than 17 years of age unless he or she is emancipated;

(5) Defines "domestic violence" as abuse or stalking;

(6) Revises the definition of "family" or "household member" to include any person related by blood or marriage; persons presently residing together or who have resided together in the past; any person who is or has been in a continuing social relationship of a romantic or intimate nature with the victim; and anyone who has a child in common regardless of whether they have been married or have resided together at any time;

(7) Revises the definition of "petitioner" as a family or household member who has been a victim of domestic violence, any person who has been a victim of stalking, or a person filing on behalf of a child pursuant to Section 455.503, RSMo;

(8) Revises the definition of "respondent" as a family or household member alleged to have committed an act of domestic violence, a person alleged to have committed an act of stalking against whom a petition has been filed, or a person served on behalf of a child pursuant to Section 455.503;

(9) Revises the definition of "stalking" to include stalking by any person instead of by an adult;

(10) Specifies that if a respondent is younger than 17 years of

age and is not emancipated, service of process of an ex parte order of protection must be made upon the parent, guardian, or a court-appointed guardian ad litem;

(11) Requires a court to transfer a case to juvenile court for a hearing on a full order of protection if an ex parte order is entered and the respondent is younger than 17 years of age;

(12) Requires the local law enforcement agency or any other government agency responsible for serving ex parte orders of protection to enter service information into the State Highway Patrol's Missouri Uniform Law Enforcement System (MULES) or future electronic databases that are intended for law enforcement use within 24 hours after an ex parte order is served on a respondent;

(13) Allows the court, upon a finding that it is in the best interest of the parties, to include a provision that a full order of protection with a duration of one year must automatically renew unless the respondent requests a hearing by 30 days prior to the expiration of the order;

(14) Requires the law enforcement agency maintaining MULES to enter information contained in an order of protection including any orders regarding child custody or visitation and all specifics as to the times and dates of custody or visitation provided in the order. Any change in child custody or visitation within an order must be issued to the local law enforcement agency and the agency responsible for entering the information into MULES. Any expiration, termination, or change must be entered within 24 hours of receiving the notice;

(15) Requires the court to cause a copy of any objection filed by the respondent and a notice of the date set for the hearing on that objection to an automatic renewal of a full order of protection with a duration of one year to be personally served upon the petitioner by a personal process server, sheriff, or police officer at least three days prior to the hearing. This service of process must be served at the earliest time and take priority over service in all other actions except those of a similar emergency nature;

(16) Allows the court to include in any full or ex parte order of protection such terms deemed reasonably necessary to ensure the petitioner's safety;

(17) Specifies that before the court terminates any order of protection, it can examine the circumstances of the motion to dismiss the order and may inquire of the petitioner or others in order to assist the court in determining if the dismissal is

voluntary;

(18) Specifies that a respondent in violation of an ex parte or full order of protection for a child will be guilty of a class A misdemeanor for entering a petitioner's place of employment or school or for being within a certain distance of the petitioner or a child of the petitioner. If the respondent has previously pled guilty to or has been found guilty of violating an order of protection within five years of the date of the subsequent violation, he or she will be guilty of a class D felony. Evidence of a prior plea of guilty or finding of guilt must be heard by the court out of the presence of the jury. If the court finds the existence of a prior plea of guilty or a finding of guilt beyond a reasonable doubt, the court must decide the extent or duration of the sentence or other disposition and cannot instruct the jury regarding the range of punishment or allow the jury to assess the punishment as part of its verdict;

(19) Requires any ex parte order of protection to be for the purpose of protecting the victim from domestic violence which can include restraining the respondent from communicating with the victim in any manner or through any medium;

(20) Requires any full order of protection to be for the purpose of protecting the victim from domestic violence which can include temporarily enjoining the respondent from communicating with the victim in any manner or through any medium;

(21) Requires the Division of Probation and Parole within the Department of Corrections to establish standards and to adopt a credentialing process for any court-appointed batterer intervention program;

(22) Requires all records of the juvenile court in a proceeding regarding an order of protection to be kept confidential and to only be open for inspection without a court order to the juvenile officer; school officials, law enforcement officials, prosecuting attorneys, or any person or agency providing care, custody, control, or treatment of the child; and a parent, guardian, or court-appointed guardian ad litem for the child;

(23) Specifies that any person who has pled guilty to or been found guilty of any offense committed in violation of any county or municipal ordinance in any state or any state, federal, or military law which, if committed in Missouri, would be a third degree domestic assault will be guilty of a class D felony for the third or any subsequent commission of the crime of domestic assault;

(24) Repeals the expiration provision of the Safe at Home

Confidentiality Program which provides victims of sexual assault, rape, stalking, and domestic violence a substitute mailing address through the Secretary of State's Office;

(25) Prohibits a public or private agency providing services to victims from using more than 10% of any funds received from the Services to Victims Fund for administrative purposes; and

(26) Requires the Department of Public Safety to establish the maximum reimbursement rate for a forensic examination for a victim of a sexual offense which reflects the reasonable cost of providing the examination.

FISCAL NOTE: Estimated Net Cost on General Revenue Fund of Less than \$100,000 in FY 2012, Less than \$100,000 in FY 2013, and Could exceed \$100,000 in FY 2014. No impact on Other State Funds in FY 2012, FY 2013, and FY 2014.

PROPOSERS: Supporters say that the Task Force on Domestic Violence developed these recommendations which establishes a process for juvenile victims and offenders to use in the juvenile court when obtaining an order of protection. Judges will have more flexibility to customize an order of protection to address complicated situations, providing more protection to victims.

Testifying for the bill were Senator Lamping; Representative Kelly (24); Office of Attorney General; Missouri Coalition Against Domestic and Sexual Violence; Missouri Hospital Association; Missouri State Fraternal Order of Police; and Department of Public Safety.

OPPOSERS: There was no opposition voiced to the committee.