

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

Date

January 24, 2018

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

SB18-060 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation and with a recommendation that it be placed on the consent calendar:

1 Amend printed bill, page 2, strike lines 3 and 4 and substitute "(3)
2 introductory portion, (3)(d), and (3)(e); and **add** (3)(f) and (10) as
3 follows:".

4 Page 3, strike lines 5 through 27 and substitute "HELD BY AN ALLEGED
5 VICTIM OR WITNESS; AND
6 (f) ANY OTHER ORDER THE COURT DEEMS APPROPRIATE TO
7 PROTECT THE SAFETY OF THE ALLEGED VICTIM OR WITNESS.".

8 Strike page 4.

9 Page 5, strike lines 1 through 5.

10 Page 5, strike lines 9 through 18 and substitute:

11 "SECTION 2. In Colorado Revised Statutes, **add** 18-1-1001.5 as
12 follows:

13 **18-1-1001.5 Protection order against defendant - transfer of**
14 **wireless telephone service in domestic violence cases - definitions.**

15 (1) IN ADDITION TO THE OPTIONS DESCRIBED IN SECTION 18-1-1001 (3),
16 UPON A DISCRETIONARY MOTION OF THE DISTRICT ATTORNEY OR ON THE
17 COURT'S OWN MOTION FOR THE PROTECTION OF AN ALLEGED VICTIM OR
18 WITNESS IN A CASE INVOLVING DOMESTIC VIOLENCE, AS DEFINED IN
19 SECTION 18-6-800.3 (1), AND CASES INVOLVING CRIMES LISTED IN SECTION
20 24-4.1-302 (1), EXCEPT THOSE LISTED IN SUBSECTIONS (1)(cc.5) AND

1 (1)(cc.6) OF THAT SECTION, THE COURT MAY ENTER AN ORDER DIRECTING
2 A WIRELESS TELEPHONE SERVICE PROVIDER TO TRANSFER THE FINANCIAL
3 RESPONSIBILITY FOR AND RIGHTS TO A WIRELESS TELEPHONE NUMBER OR
4 NUMBERS TO THE ALLEGED VICTIM OR WITNESS IF THE ALLEGED VICTIM OR
5 WITNESS:

6 (a) IS NOT THE ACCOUNT HOLDER; AND
7 (b) PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT THE
8 ALLEGED VICTIM OR WITNESS AND ANY MINOR CHILDREN IN HIS OR HER
9 CARE ARE THE PRIMARY USERS OF EACH WIRELESS TELEPHONE NUMBER
10 THAT WILL BE ORDERED TO BE TRANSFERRED BY A COURT PURSUANT TO
11 THIS SECTION.

12 (2)(a) AN ORDER TRANSFERRING THE FINANCIAL RESPONSIBILITY
13 FOR AND RIGHTS TO A WIRELESS TELEPHONE NUMBER OR NUMBERS TO AN
14 ALLEGED VICTIM OR WITNESS PURSUANT TO THIS SECTION MUST BE A
15 SEPARATE WRITTEN ORDER THAT IS DIRECTED TO THE WIRELESS
16 TELEPHONE SERVICE PROVIDER.

17 (b) THE ORDER MUST LIST THE NAME AND BILLING TELEPHONE
18 NUMBER OF THE ACCOUNT HOLDER, THE NAME AND CONTACT
19 INFORMATION OF THE ALLEGED VICTIM OR WITNESS TO WHOM THE
20 TELEPHONE NUMBER OR NUMBERS WILL BE TRANSFERRED, AND EACH
21 TELEPHONE NUMBER TO BE TRANSFERRED TO THE ALLEGED VICTIM OR
22 WITNESS.

23 (c) THE COURT SHALL ENSURE THAT THE ALLEGED VICTIM'S OR
24 WITNESS'S CONTACT INFORMATION IS NOT PROVIDED TO THE ACCOUNT
25 HOLDER IN PROCEEDINGS HELD PURSUANT TO THIS SECTION.

26 (d) THE ORDER MUST BE SENT OR DELIVERED IN PERSON OR
27 ELECTRONICALLY BY THE PROTECTED PARTY TO THE WIRELESS TELEPHONE
28 SERVICE PROVIDER'S REGISTERED AGENT.

29 (e) A WIRELESS TELEPHONE SERVICE PROVIDER SHALL TERMINATE
30 THE ACCOUNT HOLDER'S USE OF A TELEPHONE NUMBER THAT THE COURT
31 HAS ORDERED TO BE TRANSFERRED TO THE ALLEGED VICTIM OR WITNESS
32 PURSUANT TO THIS SECTION UNLESS THE WIRELESS TELEPHONE SERVICE
33 PROVIDER NOTIFIES THE ALLEGED VICTIM OR WITNESS AND THE COURT
34 WITHIN FIVE BUSINESS DAYS AFTER THE ISSUANCE OF SUCH ORDER EITHER
35 THAT AN ACCOUNT HOLDER NAMED IN THE ORDER HAS TERMINATED THE
36 ACCOUNT OR THAT THE REQUESTED TRANSFER CANNOT BE EFFECTUATED
37 DUE TO DIFFERENCES IN NETWORK TECHNOLOGY THAT PREVENT
38 FUNCTIONALITY OF A DEVICE ON THE NETWORK OR DUE TO GEOGRAPHIC
39 LIMITATIONS ON NETWORK OR SERVICE AVAILABILITY.

40 (3) A TRANSFER ORDERED PURSUANT TO THIS SECTION DOES NOT
41 PRECLUDE A WIRELESS TELEPHONE SERVICE PROVIDER FROM APPLYING

1 ANY ROUTINE AND CUSTOMARY REQUIREMENTS FOR ACCOUNT
2 ESTABLISHMENT TO THE ALLEGED VICTIM OR WITNESS AS PART OF THE
3 TRANSFER OF FINANCIAL RESPONSIBILITY FOR A WIRELESS TELEPHONE
4 NUMBER OR NUMBERS AND ANY DEVICES ATTACHED TO THE NUMBER OR
5 NUMBERS, INCLUDING, WITHOUT LIMITATION, IDENTIFICATION, FINANCIAL
6 INFORMATION, AND CUSTOMER PREFERENCES.

7 (4) A WIRELESS TELEPHONE SERVICE PROVIDER IS IMMUNE FROM
8 CIVIL LIABILITY FOR COMPLYING WITH AN ORDER TO TRANSFER A
9 TELEPHONE NUMBER PURSUANT TO THIS SECTION.

10 (5) THE ISSUANCE OF A PROTECTION ORDER PURSUANT TO THIS
11 SECTION DOES NOT PRECLUDE A COURT FROM ISSUING A PROTECTIVE
12 ORDER IN A CIVIL PROCEEDING.

13 (6) FOR PURPOSES OF THIS SECTION:

14 (a) "ACCOUNT HOLDER" MEANS A DEFENDANT WHO:

15 (I) IS CHARGED WITH AN OFFENSE, THE UNDERLYING BASIS OF
16 WHICH INCLUDES AN ACT OF DOMESTIC VIOLENCE, AS DEFINED IN SECTION
17 18-6-800.3 (1), OR A CRIME LISTED IN SECTION 24-4.1-302 (1), EXCEPT FOR
18 THOSE CRIMES LISTED IN SUBSECTIONS (1)(cc.5) AND (1)(cc.6) OF THAT
19 SECTION; AND

20 (II) MAINTAINS AN ACCOUNT WITH A WIRELESS TELEPHONE
21 SERVICE PROVIDER.

22 (b) "FINANCIAL RESPONSIBILITY" MEANS AN OBLIGATION TO PAY
23 SERVICE FEES AND OTHER COSTS AND CHARGES ASSOCIATED WITH ANY
24 TELEPHONE NUMBER.

25 (c) "WIRELESS TELEPHONE SERVICE PROVIDER" MEANS A PERSON
26 OR ENTITY THAT PROVIDES OR RESELLS COMMERCIAL MOBILE SERVICE, AS
27 DEFINED IN SECTION 47 U.S.C. SEC. 332 (d)(1).

28 **SECTION 3.** In Colorado Revised Statutes, 13-14-104.5, **amend**
29 (7)(a) as follows:

30 **13-14-104.5. Procedure for temporary civil protection order.**

31 (7) (a) A temporary civil protection order may be issued if the issuing
32 judge or magistrate finds that an imminent danger exists to the person or
33 persons seeking protection under the civil protection order. In
34 determining whether an imminent danger exists to the life or health of one
35 or more persons, the court shall consider all relevant evidence concerning
36 the safety and protection of the persons seeking the protection order. The
37 court shall not deny a petitioner the relief requested because of the length
38 of time between an act of abuse or threat of harm and the filing of the
39 petition for a protection order. THE COURT SHALL NOT DENY A PETITIONER
40 THE RELIEF REQUESTED BECAUSE A PROTECTION ORDER HAS BEEN ISSUED
41 PURSUANT TO SECTION 18-1-1001 OR 18-1-1001.5.

1 **SECTION 4.** In Colorado Revised Statutes, 13-14-106, **amend**
2 (1)(a) as follows:

3 **13-14-106. Procedure for permanent civil protection orders.**
4 (1) (a) On the return date of the citation, or on the day to which the
5 hearing has been continued, the judge or magistrate shall examine the
6 record and the evidence. If upon such examination the judge or magistrate
7 finds by a preponderance of the evidence that the respondent has
8 committed acts constituting grounds for issuance of a civil protection
9 order and that unless restrained will continue to commit such acts or acts
10 designed to intimidate or retaliate against the protected person, the judge
11 or magistrate shall order the temporary civil protection order to be made
12 permanent or enter a permanent civil protection order with provisions
13 different from the temporary civil protection order. A finding of imminent
14 danger to the protected person is not a necessary prerequisite to the
15 issuance of a permanent civil protection order. THE COURT SHALL NOT
16 DENY A PETITIONER THE RELIEF REQUESTED BECAUSE A PROTECTION
17 ORDER HAS BEEN ISSUED PURSUANT TO SECTION 18-1-1001 OR
18 18-1-1001.5. The judge or magistrate shall inform the respondent that a
19 violation of the civil protection order constitutes a criminal offense
20 pursuant to section 18-6-803.5 ~~C.R.S.~~, or constitutes contempt of court
21 and subjects the respondent to such punishment as may be provided by
22 law. If the respondent fails to appear before the court for the show cause
23 hearing at the time and on the date identified in the citation issued by the
24 court and the court finds that the respondent was properly served with the
25 temporary protection order and such citation, it is not necessary to
26 re-serve the respondent to make the protection order permanent.
27 However, if the court modifies the protection order on the motion of the
28 protected party, the modified protection order must be served upon the
29 respondent.

30 **SECTION 5. Act subject to petition - effective date -**
31 **applicability.** (1) This act takes effect November 1, 2018; except that,
32 if a referendum petition is filed pursuant to section 1 (3) of article V of
33 the state constitution against this act or an item, section, or part of this act
34 within the ninety-day period after final adjournment of the general
35 assembly, then the act, item, section, or part will not take effect unless
36 approved by the people at the general election to be held in November
37 2018 and, in such case, will take effect on the date of the official
38 declaration of the vote thereon by the governor."

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