

HOUSE BILL ANALYSIS

HB 2758

Brief Description: Changing provisions relating to court orders.

Sponsors: Representatives Kagi and Ballasiotes.

Hearing: February 1, 2000

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND CORRECTIONS

BACKGROUND:

There are several types of orders a court may grant that restrict a person's ability to have contact with another: (1) protection orders, (2) no-contact orders, (3) restraining orders, and (4) foreign protection orders.

Protection Orders:

Protection orders can be issued by a court in civil proceedings. There are two types of protection orders authorized by statute: domestic violence protection orders and anti-harassment protection orders.

Domestic Violence Protection Orders. A victim of domestic violence can obtain a domestic violence protection order against a respondent. The order can provide several types of relief including electronic monitoring, batterer's treatment, and a requirement that the respondent refrain from contacting the petitioner. A petitioner can obtain a temporary *ex parte* domestic violence protection order under certain circumstances. Violation of a domestic violence protection order is a gross misdemeanor unless the respondent has two prior convictions for violating a domestic violence protection order or other similar federal or out-of-state order, in which case the violation is a class C felony.

A court can grant a domestic violence protection order in a proceeding convened specifically for that purpose. A court can also grant a domestic violence protection order as part of a divorce proceeding, a non-parental action for child custody, or a paternity

action. A domestic violence protection order issued in a proceeding, convened specifically for that purpose, restrains the respondent from having contact with his or her minor children may not last more than one year. If the court finds that the respondent would resume acts of domestic violence after the order expires, the order may last more than a year.

Anti-harassment Protection Orders. A victim of unlawful harassment can obtain an anti-harassment protection order against a respondent enjoining the respondent from engaging in the unlawful harassment. A petitioner can obtain a temporary *ex parte* anti-harassment protection order under certain circumstances (*ex parte* means without the other party being present).

A court can grant an anti-harassment protection order in a proceeding convened specifically for that purpose. A court can also grant an anti-harassment protection order as part of a divorce proceeding, a non-parental action for child custody, or a paternity action. Generally, anti-harassment protection orders last one year unless the court finds that the respondent would resume unlawful harassment of the petitioner after the order expires.

No-Contact Orders:

No-contact orders can be issued by a court in a criminal proceeding. No-contact orders are generally issued by the court when a defendant is released from custody prior to trial or as part of the defendant's sentence. There are two types of prosecutions for which no-contact orders are statutorily authorized: prosecutions for criminal harassment and prosecutions for crimes involving domestic violence.

Anti-harassment No-Contact Orders. Any law enforcement officer may enforce a no-contact order issued as part of a prosecution for criminal harassment. Violation of such a no-contact order is a misdemeanor.

Domestic Violence No-Contact Orders. A law enforcement officer must enforce a no-contact order issued as part of a prosecution for a crime involving domestic violence. Violation of such a no-contact order is a gross misdemeanor, unless the defendant has two previous convictions for violating a domestic violence protection order or other similar federal or out-of-state order, in which case the violation is a class C felony.

Restraining Orders:

As part of a civil proceeding, a court may also issue a restraining order that enjoins the person subject to the order from contacting another party. Such restraining orders can be permanent or temporary. A court can grant a permanent or temporary restraining order

as part of a divorce proceeding, a non-parental action for child custody, a paternity action, or an action involving the abuse of a child or an adult dependent person. A court can grant a temporary restraining order (and not a permanent restraining order) in connection with proceedings where there has been allegations of abuse of a child or a dependent adult person.

A violation of a restraining order issued as part of a divorce proceeding or an action involving the abuse of a child or an adult dependent person is a misdemeanor. A violation of a restraining order issued as part of a non-parental action for child custody or a paternity action is a gross misdemeanor.

Foreign Protection Orders:

A foreign protection order is an injunction or similar order relating to domestic violence, harassment, sexual abuse, or stalking issued by a court of another state, territory, or possession of the United States, the Commonwealth of Puerto Rico, the District of Columbia, a United States military tribunal, or a tribal court. A violation of a foreign protection order is generally a gross misdemeanor, but becomes a class C felony in the following three circumstances: (1) the violation is an assault that does not amount to assault in the first- or second-degree; (2) the violation involved conduct that is reckless and creates a substantial risk of death or serious physical injury to another person; or (3) the offender has at least two prior convictions for violating the provisions of a no-contact order, a domestic violence protection order, or a comparable federal or out-of-state order.

Foreign protection orders are unranked crimes without an established seriousness level. Violations of these types of orders are subject to a penalty of no more than one year of confinement in jail. The court may also require community service, legal financial obligations, a term of community supervision, and a fine.

Certificate of Discharge:

When an offender has completed the requirements of his or her sentence, the Department of Corrections must notify the sentencing court, which must discharge the offender and provide the offender with a certificate of discharge.

An offender who is not convicted of a violent offense or a sex offense and is sentenced to a term involving community supervision may be considered for a discharge of sentence by the sentencing court prior to the completion of community supervision, provided that the offender has completed at least one-half of the term of community supervision and has met all other sentence requirements.

The discharge shall have the effect of restoring all civil rights lost by operation of law upon conviction. Over the years, some certificates of discharge have been deleting court order requirement provisions that prohibit the offender from contacting specified individuals or coming within a set distance of a location after he or she has been released from incarceration.

Judicial Information System:

A computerized Judicial Information System is available in each district, municipal, and superior court which is used to help prevent the issuance of competing protection orders in different courts and to give courts needed information for issuance of orders. The system includes the names of the parties and the case number for every domestic violence protection order issued, criminal no-contact order issued, and every restraining order issued as part of a divorce proceeding or a non-parental action for child custody. The system does not contain foreign protection orders, anti-harassment no-contact orders, or restraining orders issued as part of paternity actions or an action involving the abuse of a child or an adult dependent person.

Aggravating Factor:

The standard range is presumed to be appropriate for the typical felony case. However, the law provides that in exceptional cases, a court has the discretion to depart from the standard range and may impose an exceptional sentence below the range (with a mitigating circumstance) or above the range (with an aggravating circumstance). The Sentencing Reform Act provides illustrative mitigating and aggravating factors as examples of the kinds of factors a court may use to justify an exceptional sentence outside of the presumptive range. Among the illustrative aggravating factors provided by the Sentencing Reform Act are deliberate cruelty by a defendant, vulnerability of a victim, sexual motivation on the part of the defendant, and multiple incidents of abuse to a victim.

Modified Orders:

Law enforcement agencies are authorized to arrest without warrant any person they believe has violated the restraint provisions of a no-contact order, a protection order, or a restraining order issued as part of a divorce proceeding, a non-parental action for child custody, or a paternity action.

Informational brochures:

Back in 1994, the Office of the Administrator for the Courts (OAC) was requested to develop and prepare informational brochures, designed to assist petitioners in the use and rules in obtaining a protection order, a no-contact order, and a restraining order issued as part of a divorce proceeding. The ways to obtain other types of orders are not included

in the informational brochures.

Exclusion for certain Orders:

A victim is prohibited from obtaining an anti-harassment protection order if they were eligible for a no-contact order or a protection order. This has caused some confusion among the courts and law enforcement as to whether an order is actually valid when the original order was issued incorrectly by the court.

SUMMARY OF BILL:

Courts are authorized to issue court orders prohibiting specific parties from coming within a specified distance of another party or a particular location. A police officer shall arrest any person who violates the restraint or exclusion provisions of a court order.

If an order is modified or terminated, the clerk of the court must notify the law enforcement agency specified in the order on or before the next judicial day. Upon receipt of notice that an order has been terminated, the law enforcement agency must remove the order from any computer-based criminal intelligence system that is used.

Protection Orders, No-Contact Orders, & Restraining Orders:

When determining whether to grant a protection order, a no-contact order, or a restraining order, the courts are authorized to order parties not to come within a specified distance of another party or a specific location. As part of the order, the court may prohibit the respondent from coming within a bubble distance— of not less than 100 feet or more than 500 feet of the victim and to stay a specified distance of no more than 1,000 feet from a specified location.

A violation of a domestic violence protection order is a class C felony if an offender has two previous convictions for violating a protection order, a no-contact order, a restraining order issued as part of a divorce proceeding, a non-parental action for child custody, a paternity action, or an action involving the abuse of a child or an adult dependent person, or a foreign protection order.

Foreign Protection Orders:

Violations of Foreign Protection Orders are included on the sentencing grid as a seriousness level V. Violations of foreign protection orders are also included on the list of items that qualify as domestic violence.

Certificate of Discharge:

When an offender has completed the requirements of his or her sentence, the Department of

Corrections must notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge. However, unless specifically ordered otherwise, certificates of discharge cannot terminate an offender's duty to comply with a court order prohibiting the offender from having contact with specified individuals.

Judicial Information System:

The courts' computerized judicial information system must include all orders for protection in its data base including foreign protection orders, anti-harassment no-contact orders, and restraining orders issued as part of paternity actions or an action involving the abuse of a child or an adult dependent person.

Aggravating Factor:

Violations of domestic violence protection orders, domestic violence no-contact orders, foreign protection orders, anti-harassment no-contact orders, anti-harassment protection orders, and restraining orders issued as part of paternity actions or an action involving the abuse of a child or an adult dependent person, are added to the list of aggravating factors that a court may consider when determining whether an offender should receive an exceptional sentence outside of the sentencing grid.

Modified Orders:

Law enforcement agencies are authorized to arrest without warrant any person they believe has violated the restraint provisions of a no-contact order, a protection order, a foreign protection order, or a restraining order issued as part of a divorce proceeding, a non-parental action for child custody, a paternity action, or an action involving the abuse of a child or an adult dependent person.

In addition, if at anytime a no-contact order or a restraining order is modified or terminated the clerk of the court must send notice of the changed order to the appropriate law enforcement agency. Upon receipt of the order change or termination, the law enforcement agency must modify or remove the order from any computer-based system that is used to list outstanding warrants.

Informational brochures:

The Office of the Administrator for the Courts (OAC) must revise their informational brochures, designed to assist petitioners, to specify the use of and process for obtaining, modifying, and terminating a protection order, a no-contact order, a foreign protection order, and a restraining order issued as part of a divorce proceeding, a non-parental action for child custody, a paternity action, or an action involving the abuse of a child or an adult dependent person.

Exclusion for certain Orders:

The provision of law that prohibits victims from getting a anti-harassment protection order if they were eligible for a no-contact order or a protection order is eliminated. This will help to eliminate the confusion as to what type of order a victim needs to obtain for his or her safety.

FISCAL NOTE: Requested on February 2, 2000.

EFFECTIVE DATE: Ninety days after adjournment of a session in which bill is passed.