

HOUSE BILL REPORT

E2SSB 6400

As Passed House - Amended:

March 3, 2000

Title: An act relating to domestic violence.

Brief Description: Changing provisions relating to domestic violence.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Wojahn, Costa, Kohl-Welles, Winsley, Rasmussen and McAuliffe; by request of Governor Locke).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/18/00, 2/23/00 [DPA];
Appropriations: 2/26/00, 2/28/00 [DPA(APP w/o CJC)s].

Floor Activity:

Passed House - Amended: 3/3/00, 98-0.

Brief Summary of Engrossed Second Substitute Bill (As Amended by House Committee)

- Authorizes courts to issue court orders that restrain parties from knowingly coming within or remaining within a specified distance of a specified location.
- Consolidates all violations of court orders in one uniform section of the statute.
- Authorizes the Department of Social and Health Services (DSHS) to seek a domestic violence protection order on behalf of and with the consent of any vulnerable adult.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass. Signed by 8 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Cairnes, Republican Vice Chair; Lovick, Democratic Vice Chair; B. Chandler; Constantine; Kagi and Koster.

Staff: Yvonne Walker (786-7841).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Criminal Justice & Corrections. Signed by 31 members: Representatives Huff, Republican Co-Chair; H. Sommers, Democratic Co-Chair; Barlean, Republican Vice Chair; Doumit, Democratic Vice Chair; D. Schmidt, Republican Vice Chair; Alexander; Benson; Clements; Cody; Crouse; Gombosky; Grant; Kagi; Keiser; Kenney; Kessler; Lambert; Linville; Lisk; Mastin; McIntire; McMorris; Mulliken; Parlette; Regala; Rockefeller; Ruderman; Sullivan; Sump; Tokuda and Wensman.

Staff: Heather Flodstrom (786-7391).

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, that 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.

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.

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, an action involving the abuse of a child or an adult dependent person, or a paternity action. 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 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.

Courts

A computerized Judicial Information System (JIS) 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 that is issued as part of a divorce proceeding or a non-parental actions for child custody. The system does not contain foreign protection orders, orders issued on behalf of vulnerable adults, or restraining orders issued as part of paternity actions, an action involving the abuse of a child or an adult dependent person.

Summary of Amended Bill:

Courts are authorized to issue court orders prohibiting specific parties from knowingly coming within or knowingly remaining within a specified distance of a particular location. A police officer shall arrest any person who violates the restraint or exclusion provision of a court order relating to domestic violence.

In addition, effective July 1, 2000, violations of no-contact orders, foreign protection orders, and restraining orders will be subject to the violation penalties applied to domestic violence protection orders issued as part of civil proceedings. A violation of a domestic violence protection order is a gross misdemeanor unless the respondent has two prior convictions for violating an order, in which case the violation is a class C felony. Felony violations of domestic violence protection orders will continue to be ranked as a seriousness level V on the sentencing grid.

Protection Orders

When determining whether to grant a domestic violence protection order, the courts are authorized to prohibit the parties from knowingly coming within or knowingly remaining within a specified distance of a specific location.

No-Contact Orders

The penalties for violating a no-contact order issued during pre-trial or as part of a sentence are removed from the criminal domestic violence statute. The penalties are moved to a new section of law in order to consolidate all violations of domestic violence orders in a more uniform structure. As a result, violations of no-contact orders are subject to the same penalties applied to domestic violence protection orders.

Restraining Orders

When determining whether to grant a temporary or a permanent restraining order, as part of a divorce proceeding, a non-parental action for child custody, or a paternity action, the courts are authorized to prohibit the parties from knowingly coming within or remaining within a specified distance of a specific location.

The penalties for violating the restraint and exclusion provisions of a restraining order issued as part of a divorce proceeding, a non-parental action for child custody, or a paternity action, are moved to a new section of law in order to consolidate all violations of domestic violence orders in a more uniform structure. Violations of restraining orders are subject to the same penalties applied to domestic violence protection orders. As a result of this move, a violation of a restraining order issued as part of a divorce proceeding is increased from a misdemeanor to a gross misdemeanor unless the respondent has two prior convictions for violating an order, in which case the violation is a class C felony.

Foreign Protection Orders

The penalties for violating the restraint and exclusion provisions of a foreign protection order, are removed from the Foreign Protection Order Full Faith and Credit Act. The penalties are hence moved to a new section of law, in order to consolidate all violations of domestic violence orders in a more uniform structure. Violations of foreign protection orders are subject to the same penalties applied to domestic violence protection orders.

Courts

All court orders issued for protection of a party must be entered in the JIS. When a guardian or the DSHS has petitioned for relief on behalf of a vulnerable adult, then the name of the vulnerable adult must be included in the database as a party, rather than the guardian or the department.

The Office of the Administrator for the Courts, must revise all informational brochures relating to court orders designed to assist petitioners, to specify the use of and process for obtaining, modifying, and terminating an order.

In addition, certificates of discharge received upon an offender's release from confinement, must not terminate his or her duty to comply with a court order. Courts must also immediately notify the proper law enforcement agency anytime a court order is modified or terminated. Upon receipt of an order that has been changed or terminated, the law enforcement agency must modify or remove the order from any computer-based system that is used to list outstanding warrants.

Vulnerable Adults- The DSHS, may seek a domestic violence protection order from the courts on behalf of and with the consent of any vulnerable adult. The courts are authorized to issue an order of protection issued on behalf of a vulnerable adult that prohibits the respondent from knowingly coming within or knowingly remaining within a specified distance from a particular location. An order of protection issued on behalf

of a vulnerable adult must include notice of the criminal penalties imposed for violating the restraint provisions of the court order.

A vulnerable adult is defined as any person 60 years or older who has the functional, mental, or physical inability to care for himself/herself. Vulnerable adults include anyone who is developmentally disabled, who is living in a boarding home, nursing home, adult family home, residential facility, or other licensed facility or a person receiving services from a home health, hospice, or a licensed home care agency.

Definition- The definition of domestic violence includes violations of court orders relating to domestic violence in all types of proceedings.

Mandatory Fines- A mandatory fine of \$500 for gross misdemeanors and \$250 for misdemeanors, must be imposed on any offender convicted of a domestic violence crime in district or municipal court. The court must remit the assessments imposed and collected to the city or county treasurer accordingly. The city or county treasurer must remit 50 percent of the funds to the state treasurer for deposit in the public safety and education account. The remaining 50 percent of the funds received must be retained by the city or county for the purposes of reimbursing the city or county for the costs associated with implementing this act. Effective immediately, the mandatory fines apply to violations of all court orders regardless of the date the court issued the order.

Department of Social & Health Services- The DSHS is authorized to contract with public or private non-profit groups or organizations with experience and expertise in the field of domestic violence. These groups must develop and provide advocacy, community education, and specialized services to under-served victims of domestic violence.

In addition, the department must periodically evaluate domestic violence perpetrator programs, previously approved for court referral, to determine whether they are in compliance with existing standards.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (Criminal Justice & Corrections) This bill is a companion to a House bill the committee heard a week or so ago with three significant differences. First, the Senate simplified the financing provisions in the bill to provide a greater share of the revenue, from the penalty assessments, to local government and put the remaining revenue in the state's public education and safety account to fund domestic violence

prevention programs. Second, language was added to protect people accused of violating court orders by defining that a violation is a violation if and only if someone knowingly comes within or knowingly remains a specified distance from a prohibited place or person. Third, the Senate created a loophole in the bill that enables batterers to get away with intimidating or harassing the victims by explaining that their contact was reasonable. This section is a get out of jail free card for batterers.

The House, however included other good provisions in its version of the bill that the Senate did not, such as provisions for protecting children, removing expired or modified court orders from databases, and updating the brochures that the courts provide to victims.

This bill provides significant protections for victims of domestic violence and allows judges to craft protection orders carefully and properly so law enforcement can better enforce the orders.

(Appropriations) This bill is a collaborative effort that will strengthen domestic violence laws. The funding generated in this bill will be used for domestic violence programs and services to domestic violence victims at the state level. It also creates a new funding source for cities and counties without requiring any extra services, because the floating bubble provisions have been removed.

Testimony Against: (Criminal Justice & Corrections) While the Senate bill adds an affirmative defense, if the victim initiated contact, the bill still allows immediate mandatory arrest for any violation. An affirmative defense only comes into play after a criminal prosecution has begun. This is still too much criminalization and too much power to be vested in one person over another.

More troubling is the fact that the language referring to violations of all family law orders, criminalizes every restraint in every order (note: this has been corrected in the House striker to the Senate bill).

Criminalizing court orders is not the answer. Laws already exist that give police officers the tools they need to take action they deem necessary at any scene (e.g., stalking, harassment, assault, property destruction, and protection orders). It is hoped that the Legislature would not further overburden our criminal justice systems which already cannot adequately handle the valid criminal cases brought in front of them.

The state needs to enforce more communication and dispute resolution meetings instead of authorizing the issuance of more protection orders. Court orders prohibit people from talking to each other and working out their differences.

(Appropriations) This bill is unfair to the perpetrators of domestic violence. Restraining orders should apply to both parties so that neither party can antagonize the other.

Children should be able to see their parents regardless of a restraining order that prohibits the parents from seeing each other. The Legislature should make sure to institute checks and balances in the domestic violence system and not allow as many court orders on people, because they take time and money to fight in court.

Testified: (Criminal Justice & Corrections)(In support) Dick VanWagenen, Governor's Policy Office; and Mary Pontarolo, Washington Coalition Against Domestic Violence.

(Opposed) Lisa Scott, Family Law Attorney TABS; Charlene Keys, citizen; Bill Harrington, American Father's Alliance; Clyde Wilbanks, citizen, and Greg Schmidt, citizen.

(Appropriations) (In support) Dick VanWagenen, Governor's Policy Office; and Sharon Case, Washington State Coalition Against Domestic Violence.

(Opposed) Steve McBride, citizen.