

HOUSE BILL REPORT

HB 1642

As Reported by House Committee On: Judiciary

Title: An act relating to criminal violations of no-contact orders, protection orders, and restraining orders.

Brief Description: Concerning criminal violations of no-contact orders, protection orders, and restraining orders.

Sponsors: Representatives Pedersen, Lantz, Williams, Moeller, Wood, Kirby, O'Brien, Chase, Ormsby and Green.

Brief History:

Committee Activity:

Judiciary: 2/7/07, 2/14/07 [DPS].

Brief Summary of Substitute Bill

- Provides that a violation of certain restraint provisions in a no-contact, restraining, or protection order is a gross misdemeanor, regardless of whether the violation is one for which an arrest is required.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern, Kirby, Moeller, Pedersen, Ross and Williams.

Staff: Trudes Tango (786-7384).

Background:

There are several different types of no-contact, protection, and restraining orders. The provisions in these orders can vary. For example, domestic violence protection orders may include provisions: (a) restraining the respondent from committing acts of domestic violence; (b) excluding the person from another's residence, workplace, school, or daycare; (c)

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prohibiting the respondent from coming within a specified distance of a location; (d) restraining the respondent from contact with a victim of domestic violence or the victim's children; and (e) ordering that the petitioner have access to essential personal effects and use of a vehicle.

A restraining order issued in a dissolution proceeding may include many of the same provisions as in a domestic violence protection order, and may also: (a) restrain one party from molesting or disturbing another person; (b) restrain the respondent from transferring, selling, removing, or concealing property; and (c) restrain the respondent from removing a minor child from the jurisdiction.

A no-contact order, which can be issued when a person has been arrested or charged with a domestic violence crime, prohibits the person from having any contact with the victim.

Regardless of the type of order, violations of no-contact, protection, and restraining orders are punishable under the Domestic Violence Protection Act. Violations of these orders can constitute contempt of court, a gross misdemeanor, or a felony, depending on the circumstances.

The relevant part of the statute establishing when a violation is a gross misdemeanor reads:

Whenever an order is granted under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or there is a valid foreign protection order as defined in RCW 26.52.020, and the respondent or person to be restrained knows of the order, a violation of the restraint provisions, or of a provision excluding the person from a residence, workplace, school, or day care, or of a provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or of a provision of a foreign protection order specifically indicating that a violation will be a crime, *for which an arrest is required under RCW 10.31.100(2) (a) or (b)*, is a gross misdemeanor except as provided in subsections (4) and (5) of this section.

Some trial courts have interpreted the statute to require that the violation of a restraint provision be one for which an arrest is required under RCW 10.31.100(2)(a) or (b) in order for the violation of the order to be a gross misdemeanor. An arrest is required under RCW 10.31.100(2)(a) when, among other things, the person violates a provision restraining the person from committing acts of threats or violence. Thus, some trial courts have ruled that a violation of a no-contact order is a gross misdemeanor when the person violates the restraint provision of the order by committing acts of threats or violence. Short of acts of threats or violence, a violation of a restraint provision in an order is punishable as contempt of court.

Summary of Substitute Bill:

The provision describing when it is a gross misdemeanor to violate a no-contact, protection, or restraining order is amended.

It is a gross misdemeanor when a person who is subject to a no-contact, protection, or restraining order knows of the order and violates a restraint provision prohibiting acts or threats of violence against, or stalking of, a protected party, or a restraint provision prohibiting contact with a protected party.

Substitute Bill Compared to Original Bill:

The substitute bill adds violations that constitute acts or threats of violence and stalking to the type of restraint provisions that, if violated, will be a gross misdemeanor.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) It was not the intent of the original statute to have these orders not be enforceable. The Domestic Violence Prevention Act gave judges authority to prohibit all contact and there is a warning on the order saying that it's a crime if the person contacts the victim. Without this fix, the person can contact the victim without it being a crime. It is a technical fix to restore the intended protections of the law. Some courts are interpreting the statute to mean there are less severe violations of no contact orders. The recent ruling that nonviolent violations of an order are not enforceable leaves victims feeling unsure and re-victimized. There needs to be clarity in this area. Contact, by itself, is a key tool for domestic violence perpetrators. The person doesn't need to make a verbal threat for the victim to feel threatened.

(Opposed) When SB 6400 was passed in 2000, there was discussion about what parts of a restraining order would be criminalized. The parts that are criminalized are those that address when a person is actually put in danger and when the perpetrator is in a physical location. When the major revisions were done in 2000, these questions were answered. Not all violations are always willful. This bill will increase the number of criminal charges. Prosecutors can already bring contempt of court actions to enforce these orders. The burden of proof applicable to get one of these orders is very low. There are too many protection orders granted when there is no evidence of abuse. These orders can often be misused.

Persons Testifying: (In support) Representative Pedersen, prime sponsor; Teresa Cox, City of Everett; Katie Kuciembra, Snohomish County; Lisa Aguilar, Center for Battered Women; Jennifer Samson, Detective, Seattle Police Department; and David Martin, King County Prosecutors Office, Domestic Violence Unit.

(Opposed) Lisa Scott and Clyde Wilbanks, Taking Action Against Bias in the System.

Persons Signed In To Testify But Not Testifying: None.