

SENATE BILL REPORT

ESHB 2756

As Reported By Senate Committee On:
Law & Justice, February 26, 1998

Title: An act relating to domestic violence.

Brief Description: Changing domestic violence protection orders.

Sponsors: House Committee on Law & Justice (originally sponsored by Representatives Sheahan, Costa, Lambert, Constantine, Sherstad, Kessler, Ogden, Dickerson, Conway, Cooper, Mason, Anderson, Thompson, Gardner, Wood, Morris and Ballasiotes).

Brief History:

Committee Activity: Law & Justice: 2/24/98, 2/26/98 [DPA].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Roach, Chair; Johnson, Vice Chair; Kline, Long, McCaslin and Thibaudeau.

Staff: Lidia Mori (786-7755)

Background: Domestic violence is the commission by one family or household member of one of a number of specified crimes against another family or household member. The crimes that may be domestic violence include: assault, rape, stalking, reckless endangerment, coercion, burglary, criminal trespass, malicious mischief, kidnaping, unlawful imprisonment, interference with reporting of domestic violence, and violation of a domestic violence restraining order or no-contact order. There are a number of criminal and civil statutory schemes for the protection of victims of domestic violence and for the punishment of domestic violence offenders.

NO-CONTACT, PROTECTION AND RESTRAINING ORDERS

A victim of domestic violence may seek protection under a variety of court orders to restrain a person from certain acts, including contact with the victim or the victim's children, or from entering or coming within a specified distance of certain locations.

No-Contact Orders: When a person commits an offense involving domestic violence, the court may issue a "no-contact" order prohibiting the offender from having any contact with the victim. The court is not specifically authorized to restrain the defendant from going within a specified distance of the victim.

Domestic Violence Protection Orders: A person who is a victim of domestic violence may petition for a domestic violence protection order even if no criminal charges are pending against the alleged domestic violence offender. The court may enter an order that excludes

the respondent from the dwelling which the parties share, the residence, workplace, or school of the victim, or from the day care or school of the child. In addition, the court may restrain the respondent from having any contact with the victim or the victim's children or household members. The court is not specifically authorized to restrain the person from going within a specified distance of the victim or the victim's children or household members; or from coming within a specified distance of a shared dwelling, residence, workplace, school or day care.

Restraining Orders: In a domestic relations case concerning dissolution of marriage, third-party custody actions, and paternity actions, the court may enter a restraining order or a domestic violence protection order against a party. The restraining order may restrain a party from molesting or disturbing the peace of the other party or of any child; or from going onto the grounds of or entering the home, workplace, or school of the other party, or the day care or school of any child. The court is not specifically authorized to restrain the person from acts or threats of violence; from contacting or coming within a specified distance of another party; or from coming within a specified distance of the residence, workplace, school, or day care of another party, or the day care or school of any child.

A court may also enter a restraining order in an action relating to the abuse of a child or dependent person. The order may restrain a person from molesting or disturbing the peace of the victim, entering the family home of the victim, or having any contact with the victim. The court is not specifically authorized to restrain the party from acts or threats of violence; from going onto the grounds of, or coming within a specified distance of, the school or day care of the victim; or from coming within a specified distance of the victim.

DOMESTIC VIOLENCE OFFENDER PROVISIONS

Mandatory Arrests: A police officer must arrest a person without a warrant if the officer has probable cause to believe that the person has violated a no-contact, protection, or restraining order, of which the person had knowledge, that restrains the person from acts or threats of violence, or from going onto the grounds of or entering a residence, workplace, school, or day care.

Release Pending Sentencing or Appeal: When a defendant is convicted of a crime, there is usually a delay between the date of the conviction and the date the sentence is imposed. Under most circumstances, a defendant who has been convicted and is awaiting sentencing is detained in jail unless the court finds that the defendant is not likely to flee or to pose a danger to others if released. However, a defendant convicted of certain sex offenses must always be detained pending sentencing.

When a defendant who has been sentenced appeals a conviction, the court has discretion to release the defendant pending the outcome of the appeal unless the court finds that: the defendant is likely to flee or pose a danger to others; release will unduly diminish the deterrent effect of the punishment; release will cause unreasonable trauma to the victims or their families; or the defendant has failed to pay court-ordered financial obligations. In addition, a defendant must be detained pending appeal if the offense is one of specified sex offenses.

Violation of Conditional Release Pending Trial: A person arrested for or charged with a domestic violence offense may be released on bail or personal recognizance pending the trial. As a condition of the release, the court may issue a no-contact order, which prohibits the defendant from having any contact with the victim of the domestic violence offense. In addition, the court may require the defendant to submit to electronic monitoring or surrender any firearms, dangerous weapons, or concealed pistol license the defendant may have.

A violation of a no-contact order is generally a misdemeanor offense, unless the violation involved an assault or the defendant has two prior violations of an order, in which case the violation becomes a class C felony.

Misdemeanors as Criminal History: The Sentencing Reform Act (SRA) provides presumptive sentences for felony offenders based on the seriousness of the current offense and the defendant's "offender score." The offender score is determined by assigning points to the defendant's criminal history. Generally, only prior felony offenses are used to calculate a defendant's offender score and prior misdemeanor offenses are not considered. However, there are some instances where prior misdemeanors will count towards a defendant's offender score. For example, if a defendant is convicted of a felony traffic offense, some prior misdemeanor traffic offenses will be considered, such as drunken driving, reckless driving, or hit-and-run driving.

Community Placement after Confinement: Under SRA, the court may require offenders who have committed certain offenses to serve a period of "community placement" after the term of prison confinement has been served. If the court orders a term of community placement after confinement for an offender, the court must impose the following conditions: reporting to a community corrections officer; involvement in approved education, employment or community service; no possession of controlled substances; payment of supervision fees; prior approval of living arrangements; and submission to monitoring. In addition, the court may impose a number of other conditions, including: restriction to a specific geographic area; no contact with specified persons; or participation in crime-related treatment or counseling.

For certain offenses, the court must impose a one-year term of community placement while certain other offenses require the court to impose a two-year term of community placement. Offenses for which the court must impose a one-year term of community placement include certain sex offenses, second-degree assault, second-degree assault of a child, a crime against a person if the defendant was armed with a deadly weapon, and certain drug offenses.

JUDICIAL INFORMATION SYSTEM

The Judicial Information System must include all orders issued in proceedings involving: domestic violence protection orders, criminal no-contact orders, anti-harassment orders, dissolution of marriage, third party custody actions, and paternity actions. The information must include the names of the parties, the cause number, the criminal histories of the parties, and any other relevant information necessary to assist courts.

Summary of Amended Bill: The restrictions that may be imposed on persons under no-contact, protection, or restraining orders are expanded and the circumstances under which a police officer must arrest a domestic violence offender are also expanded to include these

new types of restraints. Changes are made to the types of information that must be entered into the Judicial Information System and the responsibility of court clerks for this information.

NO-CONTACT, PROTECTION, AND RESTRAINING ORDERS

No-Contact Orders: The conditions that may be imposed by a court when a person is arrested or convicted of an offense involving domestic violence are expanded to include restraining the person from intentionally coming within a specified distance of a location specified in the order. References to "no-contact" order are removed.

Domestic Violence Protection Orders: The conditions that may be imposed when a court enters a domestic violence protection order are expanded to include restraints on the person from intentionally coming within a specified distance of a location specified by the court; or from going onto the grounds of, entering, or coming within a specified distance of a dwelling the parties share, a residence, workplace, school, or day care. Domestic violence protection orders may only be issued in paternity actions after entry of the judgment and order determining the parent-child relationship.

Restraining Orders: The conditions that may be imposed when a court enters a restraining order are expanded to include restraints against acts or threats of violence; from contacting or intentionally coming within a specified distance of any location specified in the order; or from coming within a specified distance of the home, workplace, or school of the other party, or the day care or school of a child.

DOMESTIC VIOLENCE OFFENDER PROVISIONS

Mandatory Arrests: The mandatory arrest provision for a violation of a no-contact, protection, or restraining order is expanded to include violations of provisions restraining the person from contacting or intentionally coming within a specified distance of a location specified in the order, or coming within a specified distance of a residence, workplace, school, or day care.

JUDICIAL INFORMATION SYSTEM

The types of court orders that must be included in the Judicial Information System (JIS) is clarified to apply to only dissolution actions that involve minor children or a restraining order, and only to paternity actions upon entry of a final judgment and order. In addition, orders in the following actions are required to be entered into JIS: child custody actions under the Uniform Child Custody Jurisdiction Act, dependency and termination of parent-child relationship actions, and at-risk youth and child in need of services actions if a residential placement decision is made. Orders entered in a paternity action restraining a party from removing a child from the jurisdiction of the court are not required to be entered into JIS.

The types of information on parties that must be entered into JIS for these orders are limited to: names and aliases, case number, date of birth, and one other identifier to be determined by JIS.

Clerks who collect and enter information concerning court orders into JIS and who provide this information to the court are not engaged in the practice of law, and the clerks are not responsible for incorrect or incomplete information provided by the litigants. Clerks are immune from liability for the unauthorized release of information by court personnel. The sharing of information with other courts does not violate confidentiality restrictions, except that juvenile dependency records may only be shared among superior courts.

Amended Bill Compared to Original Bill: In the original bill, no-contact orders, domestic violence protection orders and restraining orders could restrain a person from coming within a specified distance of the victim with the intent to harass, intimidate or frighten the victim. The amended bill allows no-contact orders, domestic violence protection orders and restraining orders to restrain a person from coming within a specified distance of any location specified in the order.

The provision requiring the court to order an offender who has violated a condition of a no-contact order after being released from custody to be arrested and held without bail until a hearing is held to reconsider the release of the offender is removed in the amended bill. The amended bill does not amend the Sentencing Reform Act to require the court to sentence felony domestic violence offenders to a one year term of community placement following release of the offender from confinement. Prior misdemeanor domestic violence offenses do not count as criminal history in determining an offender's sentencing score for a current felony domestic violence offense as in the original bill.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The changes to the judicial information system address the concerns of clerks and a balance of privacy interests and work load is achieved. The bill allows the court to put specific parameters around a victim so that the offender may not come within a certain distance of the victim.

Testimony Against: There is concern about the moving bubble– of restricted area around the victim. There needs to be language in the bill that makes it clear the offender intended to violate the order and harass or intimidate the victim.

Testified: Representative Jeralita Costa (pro); Mary Pontorolo, Washington State Coalition Against Domestic Violence (pro); Leo Poort, Seattle Police Department (pro with concerns); Judith Shoshana, Seattle Law Department (pro); Debbie Wilke, Washington Association Of County Clerks and WACO (pro).