

HOUSE BILL REPORT

HB 2402

As Reported By House Committee On:
Criminal Justice & Corrections

Title: An act relating to domestic violence.

Brief Description: Changing provisions relating to domestic violence.

Sponsors: Representatives Ballasiotes, O'Brien, Radcliff, Cody, Edwards, Benson, Haigh, Ruderman and Kagi; by request of Governor Locke.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 1/26/00, 2/4/00 [DPS].

Brief Summary of Substitute Bill

- Authorizes courts to issue court orders prohibiting specific parties from coming within a specified distance of another party or a particular location.
- Consolidates all violations for 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.
- Imposes a mandatory fine on any offender convicted of a domestic violence crime with the proceeds to be used to fund domestic violence programs and prevention services.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill 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).

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.

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.

Judicial Information System

A computerized 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 and a non-parental actions for child custody. The system does not contain foreign protection orders, orders issued on behalf of a vulnerable adult, or restraining orders issued as part of paternity actions, an action involving the abuse of a child or an adult dependent person.

Summary of Substitute 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 relating to domestic violence. If a court 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 system that they use.

In addition, effective July 1, 2000, violations of no-contact 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 order parties not to come within a specified distance of another party or 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 order parties not to come within a specified distance of another party or 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.

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.

Judicial Information System

All foreign protection orders and orders issued for protection of vulnerable adults must be entered in the Judicial Information System. 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.

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. 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.

The courts are authorized to issue an order of protection issued on behalf of a vulnerable adult that prohibits the respondent from coming within a specified distance from a specified location or person. 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.

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. Fifty percent of the proceeds will be given to local jurisdictions and the remaining 50 percent must be deposited in the state Domestic Violence Reduction Account. The state funds must be used to fund domestic violence programs and services to prevent domestic violence, services to victims of domestic violence and their children, and to make improvements in law enforcement relating to domestic violence. 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.

Substitute Bill Compared to Original Bill: A number of technical amendments are made and the specific distance requirements for court orders are deleted that authorized judges to specify distances in their discretion.

In addition, any time a court order is modified or terminated, the clerk of the court must notify the law enforcement agency 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 system that they use.

Appropriation: None.

Fiscal Note: Requested on January 19, 2000.

Effective Date of Substitute Bill: Section 14 of the act takes effect July 1, 2000. Section 1 of the act takes effect immediately. The remaining sections of the act takes effect ninety days after adjournment of session in which bill is passed.

Testimony For: This bill is based upon recommendations from the Governor's Domestic Violence Action Group and makes important strides in strengthening Washington's domestic violence laws. The bill also gives DSHS some additional tools to protect vulnerable adults and victims in domestic violence situations.

The intention for changing the penalties in the bill, for violating a court order, is to be able to have a more uniform penalty structure for violating a court order. The bill also authorizes the courts to prohibit a person from coming within a specific distance of a location or a victim. This was an authority that the courts originally had until last year when the Court of Appeals said otherwise in the *State vs. Chapman* case.

The bill imposes penalty assessments on those offenders who are convicted of a domestic violence crime. The fines collected will be used to provide funding for domestic violence prevention services to victims and law enforcement improvements.

Testimony Against: Revenue seems to be driving this bill however the amount of revenue that the courts will be able to actually collect is minimal.

In addition, this bill will create a floating bubble which may be unconstitutional. Other jurisdictions across the country that have addressed this issue have basically ruled that it violates the first amendment. The state needs to be real careful about the freedom of association that is guaranteed under the first amendment of the constitution as well as the freedom to travel. If the Legislature passes a law authorizing courts to issue court orders with specific distances requirements then the statute is guaranteed to be statutorily challenged in the future.

Lastly, this bill criminalizes violations of domestic violence court orders in civil court. Criminal cases should be tried in criminal court.

Testified: (In support) Dick Van Wagenen, Governor's Policy Office; Mary Pontarolo, Washington State Coalition Against Domestic Violence; Sophia Bird, Washington State Association of Counties; Larry Erickson, Washington Association of Sheriffs and Police Chiefs; Chris Wickham, Thurston County Superior Court.

(Opposed) Clyde Wilbanks, citizen; Lisa Scott, Family Law Attorney; and Lawrence Hutt, citizen.