

HOUSE BILL ANALYSIS

HB 2027

Title: An act relating to no-contact orders, no-harassment orders, protection orders, and restraining orders.

Brief Description: Changing procedures relating to no-contact orders, no-harassment orders, protection orders, and restraining orders.

Sponsors: Representatives Ballasiotes and O'Brien.

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND CORRECTIONS

Staff: Jim Morishima (786-7191).

Background:

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

I. 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.

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.

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.

II. Protection Orders

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

A. Antiharassment Protection Orders

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

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

A petition for an antiharassment protection order may be filed in the county where the unlawful harassment occurred, the county where the respondent lives, or the county where a respondent may be served if it is the same county where another respondent lives.

B. 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.

A petition for a domestic violence protection order may be filed in the county where the petitioner resides unless the petitioner had to move because of the violence, in which case the petition may be filed in the county of the petitioner's new residence.

III. 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, 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.

IV. Aggravating Circumstances

Under the Sentencing Reform Act (SRA), presumptive– sentence ranges are statutorily prescribed and when sentencing a defendant who is convicted of a felony, 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 presumptive range (with a mitigating circumstance) or above the range (with an aggravating circumstance) if there are sufficient mitigating– or aggravating– factors. The SRA 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 SRA are deliberate cruelty by a defendant, vulnerability of a victim, sexual motivation on the part of the defendant, and multiple incidents of abuse of a victim.

Summary:

I. No-Contact Orders

When determining whether to grant a no-contact order, a court must consider the physical or psychological danger posed by the defendant to any child. If such danger exists, the no-contact order may supersede any parenting plan that would otherwise allow the defendant to have contact with the child.

As part of the no-contact order, the court may: (1) order electronic monitoring of the defendant, or (2) order the defendant to stay 100 to 1,000 feet away from the victim.

A law enforcement officer must enforce a no-contact order issued as part of a prosecution for criminal harassment. The law enforcement officer may arrest a person without a

warrant if the person is violating a provision of the order requiring him or her to stay 100 to 1,000 feet away from the victim. The penalty for violating such an order is increased to a gross misdemeanor if the defendant has two previous convictions for violating any no-contact order, protection order, restraining order, or similar federal or out-of-state order.

The presence of a no-contact order is included in the list of illustrative– aggravating factors in the Sentencing Reform Act.

II. Protection Orders

When determining whether to grant an antiharassment or domestic violence protection order, the court must consider the physical or psychological danger posed by the defendant to any child. If such danger exists, the protection order may supersede any parenting plan that would otherwise allow the defendant to have contact with the child.

As part of a protection order, the court may: (1) order electronic monitoring or batterer’s treatment for the respondent (note that these options are presently available for a domestic violence protection order), or (2) order the defendant to stay 100 to 1,000 feet away from the victim.

If there is evidence of a violent crime or a sex crime, an antiharassment or domestic violence protection order may last more than one year.

A petitioner may seek a protection order when court is not in session. The petitioner may seek the order from a hearing officer– which is defined as a superior judge, a district judge, or municipal officer authorized to exercise the powers and perform the duties of district judges. The hearing officer may grant the order if the petitioner has alleged that irreparable injury will occur if the order is not granted. The order may be granted by telephone. The order may contain any of the relief that an *ex parte* temporary protection order may contain and expires when the court is next in session or after 72 hours, whichever occurs first. After the order expires, the petitioner may seek a regular protection order as otherwise provided by law. A petitioner may not seek an emergency protection order if the petitioner has obtained two such orders against the same respondent but has subsequently failed to obtain a regular protection order unless good cause for such failure can be shown.

When determining whether to grant an *ex parte* temporary or emergency protection order, the court must consider (1) the criminal history of the respondent, (2) whether the respondent has been subject to a no-contact order, a protection order, or a restraining order in the past, (3) whether the person seeking the order has requested a no-contact order, a protection order, or a restraining order against the same individual in the past, and (4) any sworn statements from witnesses.

A law enforcement officer may arrest a person without a warrant if the person is violating a provision of the protection order requiring him or her to stay 100 to 1,000 feet away from the petitioner. The penalty for violating a protection order is increased to a class C felony if the defendant has two previous convictions for violating any no-contact order, protection order, restraining order, or similar federal or out-of-state order.

A petition for a protection order may be filed in the county where the petitioner lives, where the petitioner works, where the harassment or domestic violence took place, or where the respondent lives.

The presence of a protection order is included in the list of illustrative– aggravating factors in the Sentencing Reform Act.

III. Restraining Orders

When determining whether to grant a restraining order, a court must consider the physical or psychological danger posed to any child. If such danger exists, the restraining order may supersede any parenting plan that would otherwise allow the defendant to have contact with the child.

As part of a restraining order, the court may: (1) order electronic monitoring, or (2) order the person to stay 100 to 1,000 feet away from the victim. The court may also order batterer’s treatment as part of a permanent restraining order (but not a temporary restraining order).

When determining whether to grant an temporary restraining order, the court must consider (1) the criminal history of the respondent, (2) whether the respondent has been subject to a no-contact order, a protection order, or a restraining order in the past, (3) whether the person seeking the order has requested a no-contact order, a protection order, or a restraining order against the same individual in the past, and (4) any sworn statements from witnesses.

A law enforcement officer may arrest a person without a warrant if the person is violating a provision of the restraining order requiring him or her to stay 100 to 1,000 feet away from the petitioner. The penalty for violating a restraining order is increased to a gross misdemeanor if the defendant has two previous convictions for violating any no-contact order, protection order, restraining order, or similar federal or out-of-state order.

The presence of a restraining order is included in the list of illustrative– aggravating factors in the Sentencing Reform Act.

Fiscal Note: Requested on February 22, 1999.

Effective Date: The bill has an emergency clause and takes effect immediately upon becoming law.

Office of Program Research