

SENATE BILL REPORT

E2SSB 6400

As Passed Senate, February 11, 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: Judiciary: 1/26/2000, 2/4/2000 [DPS].

Ways & Means: 2/7/2000, 2/8/2000 [DP2S].

Passed Senate, 2/11/2000, 37-7.

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 6400 be substituted therefor, and the substitute bill do pass.

Signed by Senators Heavey, Chair; Kline, Vice Chair; Costa, Goings, Haugen, Long and Thibaudeau.

Staff: Lidia Mori (786-7755)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6400 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Loveland, Chair; Bauer, Vice Chair; Brown, Vice Chair; Fairley, Fraser, Kline, Kohl-Welles, Long, McDonald, Rasmussen, B. Sheldon, Snyder, Spanel, West, Winsley and Wojahn.

Staff: Bryon Moore (786-7726)

Background: This bill is based on the recommendations of the Governor's Domestic Violence Action Group. It was formed to review the case of Linda David and recommend ways to improve the state's response to domestic violence.

Currently, penalties for violations of domestic violence court orders vary depending on whether the underlying case is criminal, civil, dissolution, custody or paternity. A violation of a criminal no-contact order or a domestic violence protection order is a gross misdemeanor. It is a felony if the violation involves an assault or act of reckless endangerment, or results in a third conviction for violating such an order. A violation of a restraining order issued in conjunction with a dissolution is always a simple misdemeanor. The proponents of this bill believe penalties for violating the restraint provisions of various

types of orders should flow from the conduct violating the order rather than the type of order.

The Court of Appeals, Division II, recently held that a batterer who violates a prohibition in a court order against coming within a specified distance of a victim's house or other location is punishable with contempt of court. The violation however does not constitute a crime because such a prohibition is not a restraint provision— within the meaning of RCW 26.50.110.

Courts may issue protective orders in cases of abuse, neglect, exploitation, or abandonment of vulnerable adults; however, violations of these orders are not defined as crimes. A vulnerable adult— is defined in statute as including a person (1) 60 years or older who has the functional, mental, or physical inability to care for himself or herself; (2) has been found incapacitated by a superior court; (3) has a developmental disability as defined in statute; (4) is admitted to any facility— as defined in law; (5) is receiving services from home health, hospice, a licensed home care agency, or a state-funded individual provider.

Summary of Bill: A person who is found guilty in district or municipal court of a domestic violence offense is assessed a monetary penalty in addition to any fine authorized by law. For each case that includes one or more convictions of a gross misdemeanor, a fine of \$500 is imposed. Each case that includes one or more convictions of a misdemeanor is assessed \$250. Fifty percent of the fine revenues are deposited into the public safety and education account. The other 50 percent of the fine revenues are retained by the local jurisdiction for reimbursement for costs associated with implementing this act pursuant to RCW 43.135.060.

The Department of Social and Health Services (DSHS) is authorized to seek orders for protection under RCW 26.50 on behalf of and with the consent of vulnerable adults. Such protection orders may prohibit a person from coming within a specified distances of locations or persons. Violation of the order is a criminal offense if the person to be restrained knows of the order.

Violations of restraint provisions of court orders related to domestic violence issued in all types of proceedings where authorized triggers arrest when a police officer has probable cause to believe an order was issued, the person restrained had knowledge of the order, and a violation has occurred. A prohibition against a person coming within a specified distance of a location or another person is a restraint provision which, if violated, will lead to arrest. Courts are authorized to order parties not to come within specified distances of locations or persons in the following proceedings: dissolution, paternity, nonparental actions for custody, and order for protection cases. It is an affirmative defense that the person charged with violating an order did not initiate the contact with the person protected by the order and did not unreasonably continue the contact.

It is a class C felony to violate a no-contact order, a foreign protection order, or restraining order issued in a dissolution, paternity, or nonparental action for custody if the violation constituted an assault, not amounting to assault in the first or second degree, reckless endangerment, or the offender has two or more previous such convictions. A violation of a no-contact order, foreign protection order or restraining order that does not constitute a class C felony is a gross misdemeanor. Felony violations of domestic violence protection orders are assigned to a seriousness Level V.

DSHS is directed to periodically evaluate domestic violence perpetrator programs previously approved for court referral to determine compliance with existing standards.

Foreign protection orders filed under RCW 26.52 and orders for protection of vulnerable adults must to be entered into the domestic violence database of the Judicial Information System.

DSHS is authorized to fund nonprofit organizations with expertise in the field of domestic violence to develop and provide advocacy, education, and specialized services to underserved victims of domestic violence.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Testimony For (Judiciary): This bill standardizes the penalties for violating the various kinds of protective orders so that it is the conduct violating the order that causes the penalty, not the type of case from which the order derived. It also gives DSHS some better tools for protecting vulnerable adults. Since 1990, 247 women have been murdered by their intimate partner. 14,000 people have been convicted of domestic violence in this state. Judges want the authority to tell perpetrators they have to stay a certain distance away from their victim. Bail needs to be raised for arrested domestic violence perpetrators so they stay in jail long enough to come down from drugs, alcohol, and just cool off.

Testimony Against (Judiciary): Family law should not be criminalized. The Governor's Domestic Action Group did not contain any representatives of fathers' groups. The language prohibiting a person from coming within a certain distance of another person is easily manipulated by the person who wants the protective order.

Testified (Judiciary): Senator Wojahn, prime sponsor; Dick VanWagenen, Governor's Policy Office (pro); Mary Pontarolo, WA State Coalition Against Domestic Violence (pro); Chris Wickham, Thurston County Superior Court (pro); Chuck Lawrence, Veteran's Legislative Coalition; Bill Harrington, American Father's Alliance (con); Audrey Broyles, Thurston County Prosecutor's Office (pro); Clyde Wilbanks (con); Lisa Scott (con).

Testimony For (Ways & Means): The bill implements the recommendations of the Governor's Domestic Violence Action Group. It standardizes the penalties for violating the various kinds of protective orders so that it is the conduct violating the order that causes the penalty, not the type of case from which the order derived. It holds offenders accountable for their actions. The bill provides a funding mechanism to pay for the local government costs in implementing the act, as well as funding enhanced domestic violence services.

Testimony Against (Ways & Means): None.

Testified (Ways & Means): PRO: Senator Wojahn, prime sponsor; Dick VanWagenen, Governor's Policy Office; Mary Pontarolo, WA State Coalition Against Domestic Violence; Sophia Byrd, WA State Assn. of Counties; Kathy Gerke, Assn. of Washington Cities.

House Amendment(s): The language which would have restrained a person from coming within a specified distance of another person (known as the moving bubble-) is removed.

The new fines to be imposed on offenders convicted of domestic violence offenses are removed. The fines were \$250 for a domestic violence misdemeanor and \$500 for a domestic violence gross misdemeanor offense.

Language is added such that if a domestic violence protection order is modified or terminated, the clerk of the court must notify the law enforcement agency specified in the order so that the agency can remove the order from any computer-based criminal intelligence system.

OAC must update their informational brochures concerning domestic violence orders.

A certificate of discharge does not terminate an offender's obligation to comply with a domestic violence order.

It is clarified that a no-contact order terminates if the defendant is acquitted or the charges are dismissed.

A null and void clause is added.