

SENATE BILL REPORT

SB 5697

As of February 20, 2007

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: Senators Hargrove, Kline, Weinstein, Regala, Kohl-Welles, Shin and Rasmussen.

Brief History:

Committee Activity: Judiciary: 2/07/07.

SENATE COMMITTEE ON JUDICIARY

Staff: Dawn Noel (786-7472)

Background: Under current law, whenever a no-contact order, protection order, or one of several other types of restraining orders is granted, and the person to be restrained knows of the order, a violation of the restraint provisions, or of a provision excluding a 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, is a gross misdemeanor, unless certain circumstances justify felony prosecution.

Summary of Bill: The Legislature restores and clarifies its intent that willful violation of a no-contact provision of a court order is a criminal offense and must be enforced accordingly to preserve the integrity and intent of the domestic violence act. It is not intended that law enforcement power be broadened, or that any substantive change be made to any criminal provision in the code.

Violation of the restraint provisions prohibiting contact with a protected party is a gross misdemeanor unless certain circumstances justify felony prosecution. The requirement that an arrest be required in order for a provision violation to constitute a gross misdemeanor (or a felony under certain circumstances) is eliminated.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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

Staff Summary of Public Testimony: PRO: This bill comes before the committee based on the placement of a comma in the current statute. This bill does not change the penalty of making this crime a gross misdemeanor. Because of this placement, a list of separate ways one can violate a no-contact order or other protective orders has been tied to a key phrase requiring arrest under a separate statute. This has never been the intent, and sets a dangerous precedent for domestic violence prevention and crime prevention generally. This bill is only a technical fix to effectuate the statute's intent. Without this fix, a literal reading of the statute permits an offender to contact the victim, so long as he does not threaten her, or commit an act of violence against her. These orders are for offenders who have already committed violence against a victim, and are intended to prevent further violence. Domestic violence constitutes a pattern of abusive, controlling, and coercive behaviors. Sometimes acts that don't seem threatening to others are obvious to the victim. We want to ensure that abusers don't have the opportunity to use whatever contact they can to threaten or intimidate the victim.

CON: The statute makes important distinctions between the different types of violations. One such distinction is the type of conduct involved, such as whether violent conduct or proximity violations are involved. The statute differentiates between situations involving these types of violations, and those situations involving contact based on concerns common to the parties, such as those involving children or property. If the conduct is wrongful, a prosecutor can utilize the contempt of court statute, under which a person could be fined or placed in jail.

In the 2000 amendments, the legislature considered and rejected a proposal to criminalize every restraint in every type of protection order. Restraining orders are issued in divorce proceedings almost without any evidence; their issuance does not mean that anyone has committed violence. Such orders are given at the beginning of the case to calm things down, to keep the status quo. The problem is that the system has gone wild. It would be okay if the bill was limited to criminal no-contact orders. The person subject to the restraining order is the only person who gets in trouble, even if the person who sought the restraining order was the one who approached the person restrained.

Persons Testifying: PRO: Teresa Cox, City of Everett; Grace Huang, Washington State Coalition Against Domestic Violence.

CON: Steve Lewis, Washington Association of Criminal Defense Lawyers; Lisa Scott, Clyde Wilbanks, Taking Action against Bias in the System.