

HOUSE BILL REPORT

SHB 1079

As Amended by the Senate

Title: An act relating to no-contact orders for human trafficking and promoting prostitution-related offenses.

Brief Description: Creating a criminal no-contact order for human trafficking and promoting prostitution-related offenses.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Orwall, Klippert, Goodman, Stokesbary, Kilduff, Chapman, McCabe, Hudgins, Jinkins, Ortiz-Self, Bergquist, Stanford, Griffey, Hargrove, Smith, Tarleton, Harmsworth, Ormsby, Muri, Van Werven, Kraft, Fey, Slatter, Sawyer, McBride and Gregerson; by request of Attorney General).

Brief History:

Committee Activity:

Public Safety: 1/16/17, 1/19/17 [DPS].

Floor Activity:

Passed House: 2/13/17, 97-0.

Senate Amended.

Passed Senate: 4/5/17, 48-0.

Brief Summary of Substitute Bill

- Creates procedures for entry of no-contact orders to prohibit defendants from contacting victims when charged with or convicted of Trafficking and Promoting Prostitution offenses.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Chapman, Griffey, Holy, Orwall, Pettigrew and Van Werven.

Staff: Kelly Leonard (786-7147).

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.

Background:

No-Contact Orders. Courts may issue no-contact orders to protect victims during the pendency of criminal proceedings, and these orders may also be imposed or extended as a condition of release or sentence. No-contact orders prohibit contact of any kind with the victim and forbid the respondent from being within a set distance of specific locations. They also may involve a surrender of firearms, depending on the restrained person's criminal history. There are specialized procedures and requirements for no-contact orders for harassment, domestic violence, and stalking. Generally, a violation of a no-contact order is a gross misdemeanor, except a violation can be elevated to a class C felony when tied to an assault or for a repeat violation.

Trafficking. A person is guilty of Trafficking in the second degree when he or she: (1) recruits, harbors, transports, transfers, provides, obtains, or receives by any means another person, knowing that force, fraud or coercion will be used to cause the person to engage in forced labor, involuntary servitude, a sexually explicit act or a commercial sex act, or that the person has not reached the age of 18 years and is caused to engage in a sexually explicit act or a commercial sex act; or (2) benefits financially or receives anything of value from participation in a venture that has engaged in the above acts. The offense is Trafficking in the first degree if the acts involve kidnapping, sexual motivation, or illegal harvesting of human organs or result in a death. Trafficking in the second degree is a class A felony with a seriousness level of XII, and Trafficking in the first degree is a class A felony with a seriousness level of XIV.

Promoting Prostitution. A person is guilty of Promoting Prostitution in the first degree if he or she knowingly advances prostitution:

- by compelling a person by threat or force to engage in prostitution or profits from prostitution which results from such threat or force; or
- by compelling a person with a mental incapacity or developmental disability that renders the person incapable of consent to engage in prostitution or profits from prostitution that results from such compulsion.

A person is guilty of Promoting Prostitution in the second degree if he or she knowingly profits from prostitution or advances prostitution.

Promoting Prostitution in the first degree is a class B felony with a seriousness level of VIII. Promoting Prostitution in the second degree is a class C felony with a seriousness level of III.

Summary of Substitute Bill:

Specialized no-contact orders are created for Trafficking and Promoting Prostitution offenses.

When a person is charged with or arrested for Trafficking or Promoting Prostitution, the court may issue a no-contact order prohibiting the defendant from having any contact with the victim. A no-contact order may be issued at the time of arraignment, whenever a defendant is released from custody pretrial, or as a condition of sentence. So long as the court finds probable cause, the court may issue or extend a no-contact order even if the defendant fails to appear in court.

A violation of a no-contact order is a gross misdemeanor, except a violation can be elevated to a class C felony when tied to an assault or for a repeat violation. If a person is convicted of violating a no-contact order, the court may require the defendant to submit to electronic monitoring.

A no-contact order terminates if the defendant is acquitted or the charges are dismissed.

EFFECT OF SENATE AMENDMENT(S):

Trafficking and Promoting Prostitution-related no-contact orders authorized in the bill are enforceable by a general authority Washington peace officer (rather than any law enforcement agency). The no-contact orders are fully enforceable in any jurisdiction in the state.

A no-contact order may prohibit a defendant from contacting a victim through third parties. Language is removed that specifically authorizes the court to issue or extend a no-contact order even when a defendant fails to appear.

When issuing or renewing a no-contact order, the court is authorized to consider restrictions for firearms, other dangerous weapons, and concealed pistol licenses in accordance with requirements in current law and those established by court rules.

Procedures are established for terminating or modifying a no-contact order. A defendant is authorized to seek termination or modification of an order, including conditions related to firearms, other dangerous weapons, and concealed pistol licenses. The court may terminate or modify the order if the defendant proves by a preponderance of the evidence that there has been a material change in circumstances. The victim bears no burden of proving that he or she has a current reasonable fear of harm. A defendant is authorized to file a motion to terminate or modify an order no more than once per year.

A process for providing notice to law enforcement is created. Whenever a no-contact order is issued, the clerk must forward the order to the appropriate law enforcement agency within one judicial day. The law enforcement agency must enter the order for one year or until its specified expiration date into the computer-based criminal intelligence information system. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies. The agency must remove the order from the system when it receives notice that it has been terminated.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Washington has a very high rate of trafficking, especially in South King County, and the age of trafficking victims keeps decreasing. The average age is now 14. The Legislature has done great work to address trafficking, including increasing penalties; however, this bill is a much needed step toward protecting victims. Many victims experience direct threats from their perpetrators, both before and after reporting an offense or participating in an investigation. A no-contact order is a critical tool to protect victims.

Unlike standard no-contact orders, law enforcement officers have greater access to information on specialized no-contact orders, making them easier to enforce. Also, creating Trafficking and Promoting Prostitution no-contact orders similar to domestic and stalking no-contact orders is important. When these specialized no-contact orders are violated, it is a separate offense, rather than contempt of court.

Perpetrators continue to contact and try to manipulate their victims after charges have been filed. Perpetrators will harass, threaten, entice, and lie to victims to get them to stop participating in a criminal case. In one very serious case, a victim had to receive a complete identity change through the federal government, including a new Social Security Number, to escape a perpetrator. In circumstances where the perpetrator and victim have a qualified "domestic" relationship, the victim can qualify for a domestic violence no-contact order. However, this is not the case for all victims. The Legislature should create specialized no-contact orders to protect trafficking victims.

(Opposed) None.

(Other) The bill should be amended to clarify that only agencies with general law enforcement authority can enforce these orders. The bill should be amended to remove the requirement that law enforcement inform the victim of the final disposition of his or her case. Unfortunately, law enforcement is often the last to know in these circumstances.

It is clear that no-contact or protection orders that are not easily accessible to law enforcement are harder to enforce. It makes sense for trafficking victims to receive the type of no-contact orders contemplated in the bill. However, there are very few of these cases in any given year, and creating a special no-contact order just for these cases is unnecessary. The Legislature should add these cases to the current harassment no-contact order process by modifying the existing statute.

Persons Testifying: (In support) Representative Orwall, prime sponsor; Lana Weimann, Office of the Attorney General; Coreen Schnepf, Kitsap County Prosecuting Attorney's Office; Johanna Holliday, Engedi; Carlos Rodriguez, Missing and Exploited Children Task Force-Washington State Patrol; Natalie Mays; and Julia Anderson.

(Other) James McMahan, Washington Association of Sheriffs and Police Chiefs; and Brad Meryhew, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

Persons Signed In To Testify But Not Testifying: None.