

SENATE BILL REPORT

SB 5029

As Reported by Senate Committee On:
Law & Justice, February 16, 2017

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: Senators Padden, Darneille, Hasegawa, Pearson, Pedersen, Miloscia, Frockt, Rolfes, Carlyle, Chase, Sheldon, Saldaña, Mullet, Conway, Keiser and Kuderer; by request of Attorney General.

Brief History:

Committee Activity: Law & Justice: 1/17/17, 2/16/17 [DPS].

Brief Summary of Substitute Bill

- Authorizes the court to issue a no-contact order limiting the defendant's access to the victim, to weapons, or imposing other pretrial release conditions.
- A no-contact order may be issued as soon as a citation is served or at the time of arrest and throughout the time that the case is unresolved.
- Authorizes any general authority police officer to enforce the no-contact order.
- Permits a defendant subject to a no-contact order to request the order to be modified or terminated, including weapons restrictions.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5029 be substituted therefor, and the substitute bill do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille, Frockt and Wilson.

Staff: Melissa Burke-Cain (786-7755)

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: The state charges a defendant by issuing a citation or by filing a criminal complaint in district court or an information in superior court. A defendant may not always be booked into jail in all cases and may be served with a summons or a notice to attend a scheduled court hearing at a later date and time. Depending on the case, a defendant charged with a trafficking or promoting prostitution-related crime may remain in the community before the hearing, or if in custody, may be released on bail or on personal recognizance. Current law does not provide a specific mechanism for a court to issue a protective order immediately when a defendant remains in the community. The defendant often knows the victim and how to find them, leaving the victims of these crimes vulnerable to intimidation, harassment, and injury if the defendant tries to stop them from cooperating with law enforcement.

Summary of Bill (First Substitute): A court may issue a no-contact order to a defendant charged with trafficking or promoting prostitution in the first or second degree that limits defendant's access to victims, witnesses, and to dangerous weapons, or imposes other conditions of release. A no-contact order may be issued at the time a citation is served if the defendant is not arrested, or at the time of arrest, or at any other time it is needed so long as the case is unresolved. The no-contact order must be entered into law enforcement criminal data systems that list outstanding warrants. Any general authority police officer may enforce the no-contact order. If the defendant violates the no-contact order, the violation may be charged as a new crime. The defendant may face additional sanctions that apply to violations of protective orders under the domestic violence laws. The court clerk must provide the victims or witnesses with a certified, written copy of the sentence if the defendant is guilty and the sentence includes no-contact conditions. A defendant may ask the court to modify or terminate the no-contact order no more than once every 12 months. The motion to modify or terminate a no-contact order may apply to any condition in the order including, but not limited to, limitations on possession of dangerous weapons or the defendant's concealed carry permit.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Removes the requirement for the prosecutor or local law enforcement to inform the victim of the final case disposition.
- Clarifies that general authority Washington peace officers enforce the no-contact order.
- Authorizes an immediate victim protection no-contact order beginning with service of a citation or arrest and continuing until the case resolves.
- Permits a defendant to ask the court to modify or terminate the no-contact order, including limits on possession of weapons and a concealed carry permit.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days following the end of the session in which the bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: A no contact order for promoting prostitution is not available unless a domestic violence crime is charged. A no contact order is needed because law enforcement does not have a way to know when the judge orders conditions of release. A no contact order will allow law enforcement to act more quickly to protect the victim than the current law's conditions of release allow. A no-contact order is very important to victims in this situation. The relationship between the victim and the perpetrator is one of a vulnerable human to a predator. Victims often experience trauma bonding, feel indebted to the pimp, and can be harassed by telephone from the jail or contacted by persons outside jail. We have seen a vulnerable person trying to get away from the coercion of sex for money cut with a machete. The no contact order would take the burden off of the victim who can say "I want to be around you, but I can't because of the court order." It starts the process of getting away from the perpetrator. A domestic violence order is hard to obtain in situations where a pimp may have many girls. Another example of coercion that often occurs is from Thurston County. A sixteen year old girl was prostituted by her uncle. She would get away, and WSP would take her away to juvenile or foster care but when she would leave care she would go right back to prostitution around the state and back onto drugs because of the trauma bonding with the perpetrator. There are many ways to pressure potential witnesses. Two juvenile girls that agreed to testify told me they received contacts via Snapchat and Facebook of an emoji with a gun implying they would be shot if they testified. The pimp and prostitute have anything but a domestic relationship making it difficult to qualify for the domestic violence no contact order that is currently on the books. The bill would also cover labor trafficking in addition to sex trafficking. Promoting prostitution is not a sex offense unless a sex crime is charged. The no contact order in the bill does not create confusion for law enforcement who enforce such orders or for offenders who clearly know what they are prohibited from doing under the order. If these no contact orders become available, the victim would not have to try to protect themselves on their own when their life depends on doing what the offender tells them to do. Two amendments may be helpful to clarify the bill as to enforcement and notice provisions.

CON: The defender associations agree with the concept of the bill but disagree that the new kind of no contact order is necessary. There are other means to protect victims such as an anti-harassment order from the bench. While the conditions of release approach and potentially delays notice to law enforcement, this proposal complicates the process when remedies are already available. A judge can issue an anti-harassment order and impose conditions of release. There are a relatively small number of cases where this type of protection is needed, a remedy already exists, so it really is a matter of judicial efficiency. Lawyers and judges should be educated about other options they can use to protect victims.

Persons Testifying: PRO: Coreen Schnepf, Kitsap County Prosecutor's Office; Carlos Rodriguez, Washington State Patrol/ MECTF; Lana Weinmann, Office of the Attorney General; James McMahan, Washington Assoc. of Sheriffs and Police Chiefs; Natalie Mays, Kitsap County Prosecutor's Office.

CON: Sheri Pewitt, Washington Defender Association and Washington Assoc. of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: No one.