

# SENATE BILL REPORT

## SHB 1642

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As Reported By Senate Committee On:  
Judiciary, March 21, 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:** House Committee on Judiciary (originally sponsored by Representatives Pedersen, Lantz, Williams, Moeller, Wood, Kirby, O'Brien, Chase, Ormsby and Green).

**Brief History:** Passed House: 2/28/07, 97-0.

**Committee Activity:** Judiciary: 3/20/07, 3/21/07 [DP].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, Murray, Roach and Weinstein.

**Staff:** Dawn Noel (786-7472)

**Background:** A court has authority to issue certain restraint provisions in circumstances involving sexual assault, domestic violence response, marriage dissolution and separation proceedings, non-parental actions for child custody, parental determination proceedings, domestic violence prevention, and abuse of vulnerable adults. A subset of these restraint provisions is punishable under the Domestic Violence Prevention Act as a gross misdemeanor or felony, depending on the circumstances. Regardless of the type of provision violated, violation of orders involving these circumstances is punishable in civil contempt proceedings.

A question has arisen as to whether the subset of restraint provisions that is criminally punishable under the Domestic Violence Prevention Act includes provisions prohibiting contact with a protected party. In the statutory chapters governing sexual assault protection orders, criminal no-contact orders (issued in connection with domestic violence response), abuse of vulnerable adults, and foreign protection orders, violation of no-contact provisions is specifically punishable under the Domestic Violence Prevention Act.

In the chapters governing dissolution and separation proceedings, non-parental actions for child custody, and parental determination proceedings, issuance and enforcement of no-contact provisions is not specifically mentioned. However, each of these chapters contains a

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provision authorizing a court to issue relief under the Domestic Violence Prevention Act, which specifically authorizes issuance of a provision restraining a person from having any contact with a victim of domestic violence or the victim's children or members of the victim's household.

In *State v. Turner*, 118 Wn. App. 135 (2003), the Washington Court of Appeals determined that a restraining order issued in a marriage dissolution proceeding restraining the spouse from having any contact with the other spouse except through counsel constituted a "restraint provision" punishable as a gross misdemeanor (or felony under certain aggravating circumstances) under the Domestic Violence Prevention Act.

The statute specifying which "restraint provisions" are criminally punishable under the Domestic Violence Prevention Act reads in pertinent part:

Whenever an order is granted under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or there is a valid foreign protection order as defined in RCW 26.52.020, and the respondent or person to be restrained knows of the order, a violation of the restraint provisions, or of a provision excluding the 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 under RCW 10.31.100(2) (a) or (b)*, is a gross misdemeanor except as provided in subsections (4) and (5) of this section.

Some trial courts have interpreted the statute to require that the violation of a restraint provision be one for which an arrest is required under RCW 10.31.100(2)(a) or (b) in order for the violation of the order to be a gross misdemeanor. An arrest is required under RCW 10.31.100(2)(a) when, among other things, the person violates a provision restraining the person from committing acts of threats or violence. Therefore, some trial courts have ruled that a violation of a no-contact order is a gross misdemeanor when the person violates the restraint provision of the order by committing acts of threats or violence. Short of acts of threats or violence, a violation of a restraint provision in an order is punishable as contempt of court only.

In the portion of the Washington criminal code relating to harassment, a person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime: (1) he or she intentionally and repeatedly harasses or repeatedly follows another person; (2) the person reasonably fears that the stalker intends to injure the person, another person, or property of the person or of another person; and (3) the stalker intends to frighten, intimidate, or harass the person, or knows or reasonably should know that the person is afraid, intimidated or harassed. Stalking is a gross misdemeanor, unless certain circumstances justify elevation to a Class C felony, such as if the stalking violates any protective order protecting the person being stalked.

**Summary of Substitute Bill:** The statute specifying which "restraint provisions" in several types of protective and restraining orders are criminally punishable as gross misdemeanors (or

as felonies in certain aggravating circumstances) under the Domestic Violence Prevention Act is amended.

It is clarified that the "restraint provisions" criminally punishable include those provisions prohibiting acts or threats of violence against, or stalking of, a protected party, and those provisions prohibiting contact with a protected party. Reference to the arrest requirement is eliminated for purposes of determining whether a provision violation is a gross misdemeanor.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: This is a pretty straightforward bill. No contact means no contact, whether it's in the form of an email or phone call. The best way to protect victims of domestic violence is to prohibit contact from abusers. The law recognizes that domestic violence constitutes a pattern of acts that may only be perceived as threatening by the victim. The 2000 amendments merged the criminal penalties for violation of various types of protection, restraining and no-contact orders. Before 2000, violation of a no-contact order was a gross misdemeanor in the statute governing no-contact orders. Because of the merging of criminal penalties in 2000 into a separate statute, a mandatory arrest situation is now required before the violation can be considered a gross misdemeanor. And because of that, the violation must involve an act or threat or violence. This was not the intent. The arrest requirement was only supposed to refer to foreign protection orders. Currently the defendant must be notified of the restrictions in the order. Yet multiple defendants have violated no-contact orders and cannot be arrested without this fix. Offenders must have consequences to stop their threatening behaviors.

CON: This bill makes substantive changes to the law. An entire phrase is being deleted, and an entire phrase is being added. In 2000, the arrest requirement was added after testimony that the changes would criminalize every restraint provision. The arrest requirement was not meant to only refer to foreign protection orders, because the arrest requirement describes more than just violation of foreign protection orders. Violation of every provision in these orders is already punishable under contempt of court up to one year in jail, yet this bill would make that provision superfluous. The bill would criminalize de minimus violations, like a chance encounter at a public location, and acts involving laudatory purposes such as notifying the protected party that their son or daughter is in the hospital.

**Persons Testifying:** PRO: Representative Pedersen, prime sponsor; Teresa Cox, City of Everett; Grace Huang; Washington State Coalition Against Domestic Violence; Tom McBride, Washington Association of Prosecuting Attorneys.

CON: Steven Lewis, Washington Association of Criminal Defense Lawyers, Washington Defender's Association.