

Senate Study Bill 1147 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON HOGG)

A BILL FOR

1 An Act relating to the issuance of and violations of civil
2 protective orders and criminal no-contact orders and
3 modifying penalties.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 664A.1, subsection 2, Code 2013, is
2 amended to read as follows:

3 2. "*Protective order*" means a protective order issued
4 pursuant to chapter 232, a court order or court-approved
5 consent agreement entered pursuant to chapter 236, including a
6 valid foreign protective order under section 236.19, subsection
7 3, a temporary or permanent protective order or order to vacate
8 the homestead under chapter 598, ~~or an order that establishes~~
9 ~~conditions of release or is a protective order or sentencing~~
10 ~~order in a criminal prosecution arising from a domestic abuse~~
11 ~~assault under section 708.2A,~~ or a civil injunction issued
12 pursuant to section 915.22.

13 Sec. 2. Section 664A.3, Code 2013, is amended to read as
14 follows:

15 **664A.3 Entry of ~~temporary~~ no-contact order.**

16 1. When a person is ~~taken into custody for contempt~~
17 ~~proceedings pursuant to section 236.11 or arrested for any~~
18 ~~public offense referred to in section 664A.2, subsection 1,~~
19 and the person is brought before a magistrate for initial
20 appearance, the magistrate shall enter a no-contact order if
21 the magistrate finds both of the following:

22 a. Probable cause exists to believe that any public offense
23 ~~referred to in section 664A.2, subsection 1, or a violation of~~
24 ~~a no-contact order, protective order, or consent agreement~~ has
25 occurred.

26 b. The presence of or contact with the defendant poses a
27 threat to the safety of the alleged victim, persons residing
28 with the alleged victim, or members of the alleged victim's
29 family.

30 2. ~~Notwithstanding chapters 804 and 805, a person taken~~
31 ~~into custody pursuant to section 236.11 or arrested pursuant to~~
32 ~~section 236.12 may be released on bail or otherwise only after~~
33 ~~initial appearance before a magistrate as provided in chapter~~
34 ~~804 and the rules of criminal procedure or section 236.11,~~
35 ~~whichever is applicable.~~

1 ~~3.~~ 2. A no-contact order issued pursuant to this section
2 shall be issued in addition to any other conditions of release
3 imposed by a magistrate pursuant to section 811.2. The
4 no-contact order has force and effect until it is modified or
5 terminated by subsequent court action ~~in a contempt proceeding~~
6 ~~or criminal or juvenile court action~~ and is reviewable in the
7 manner prescribed in section 811.2. ~~Upon final disposition~~
8 ~~of the criminal or juvenile court action, the court shall~~
9 ~~terminate or modify the no-contact order pursuant to section~~
10 ~~664A.5.~~

11 ~~4.~~ 3. A no-contact order requiring the defendant to have
12 no contact with ~~the alleged victim's~~ a child or children shall
13 prevail over any existing custodial, visitation, or other
14 conflicting order ~~which may be in conflict with the no-contact~~
15 ~~order.~~

16 ~~5.~~ 4. A no-contact order ~~issued pursuant to this section~~
17 shall restrict the defendant from having contact with the
18 victim, persons residing with the victim, ~~or~~ and the victim's
19 immediate family.

20 ~~6.~~ 5. A no-contact order ~~issued pursuant to this section~~
21 shall specifically include notice that the person may be
22 required to relinquish all firearms, offensive weapons, and
23 ammunition ~~upon the issuance of a permanent no-contact order~~
24 ~~pursuant to section 664A.5.~~

25 Sec. 3. Section 664A.5, Code 2013, is amended to read as
26 follows:

27 **664A.5 Modification — entry of permanent no-contact order or**
28 **protective order.**

29 If a defendant is convicted of, receives a deferred judgment
30 for, or pleads guilty to a public offense ~~referred to in~~
31 ~~section 664A.2, subsection 1,~~ or is held in contempt for a
32 violation of a no-contact order ~~issued under section 664A.3~~
33 ~~or for a violation of a protective order issued pursuant to~~
34 ~~chapter 232, 236, 598, or 915,~~ the court shall either continue,
35 terminate, or modify the ~~temporary~~ no-contact order or

1 protective order issued by the magistrate. The ~~court may enter~~
2 a no-contact order or protective order ~~continue the no-contact~~
3 ~~order already in effect~~ may be issued for a period of five
4 years from the date the judgment or contempt finding is entered
5 or the deferred judgment is granted, regardless of whether the
6 defendant is placed on probation.

7 Sec. 4. Section 664A.6, Code 2013, is amended to read as
8 follows:

9 **664A.6 Mandatory arrest for violation of no-contact order or**
10 **protective order — immunity for actions.**

11 1. If a peace officer has probable cause to believe that
12 a person has violated a no-contact order ~~issued under this~~
13 ~~chapter or a protective order~~, the peace officer shall take
14 the person into custody and shall take the person without
15 unnecessary delay before the nearest or most accessible
16 magistrate in the judicial district in which the person was
17 taken into custody. Notwithstanding chapters 804 and 805, a
18 person taken into custody pursuant to this subsection may be
19 released on bail or otherwise only after initial appearance
20 before a magistrate as provided in chapter 804 and the rules of
21 criminal procedure, or section 236.11, whichever is applicable.

22 2. If the peace officer is investigating a domestic abuse
23 assault pursuant to section 708.2A, the officer shall also
24 comply with sections 236.11 and 236.12.

25 3. A peace officer shall not be held civilly or criminally
26 liable for acting pursuant to this section provided the peace
27 officer acts in good faith and on reasonable grounds and the
28 peace officer's acts do not constitute a willful or wanton
29 disregard for the rights or safety of another.

30 Sec. 5. Section 664A.7, Code 2013, is amended to read as
31 follows:

32 **664A.7 Violation of no-contact order or protective order —**
33 **~~contempt or simple misdemeanor penalties.~~**

34 1. Violation of a no-contact order ~~issued under this chapter~~
35 or a protective order ~~issued pursuant to chapter 232, 236, or~~

1 ~~598, including a modified no-contact order,~~ is punishable by
2 ~~summary~~ contempt proceedings.

3 2. A hearing in a contempt proceeding brought pursuant to
4 this section shall be held not less than five and not more than
5 fifteen days after ~~the issuance of a rule to show cause,~~ as
6 ~~determined by the court~~ the initial appearance.

7 3. If ~~convicted of or held in contempt for a violation~~
8 of a no-contact order or a ~~modified no-contact order for a~~
9 ~~public offense referred to in section 664A.2,~~ subsection
10 ~~1, or held in contempt of a no-contact order issued during~~
11 ~~a contempt proceeding brought pursuant to section 236.11~~
12 protective order, the person shall be confined in the county
13 jail for a minimum of seven days and a maximum of one hundred
14 eighty days per violation. A jail sentence imposed pursuant
15 to this subsection shall be served on consecutive days. No
16 portion of the mandatory minimum term of confinement imposed
17 by this subsection shall be deferred or suspended. A deferred
18 judgment, deferred sentence, or suspended sentence shall not
19 be entered for a violation of a no-contact order, ~~modified~~
20 ~~no-contact order,~~ or protective order and the court shall not
21 impose a fine in lieu of the minimum sentence, although a fine
22 may be imposed in addition to the minimum sentence.

23 4. If ~~convicted or held in contempt for a violation of~~
24 a ~~civil~~ protective order referred to in section 664A.2, the
25 person shall serve a jail sentence. A jail sentence imposed
26 pursuant to this subsection shall be served on consecutive
27 days. A person who is convicted of or held in contempt for a
28 violation of a protective order referred to in section 664A.2
29 may be ordered by the court to pay the plaintiff's attorney's
30 fees and court costs.

31 5. ~~Violation of a no-contact order entered for the offense~~
32 ~~or alleged offense of domestic abuse assault in violation of~~
33 ~~section 708.2A or a violation of a protective order issued~~
34 ~~pursuant to chapter 232, 236, 598, or 915 constitutes a~~
35 ~~public offense and is punishable as a simple misdemeanor.~~

1 ~~Alternatively, the court may hold a person in contempt of court~~
2 ~~for such a violation, as provided in subsection 3.~~

3 ~~6.~~ 5. A person shall not be held in contempt ~~or convicted~~
4 ~~of violations~~ under multiple no-contact orders, protective
5 orders, or consent agreements, for the same set of facts and
6 circumstances that constitute a single violation.

7 Sec. 6. Section 664A.8, Code 2013, is amended to read as
8 follows:

9 **664A.8 Extension of no-contact order.**

10 Upon the filing of an application by the state or by the
11 ~~victim of any public offense referred to in section 664A.2,~~
12 ~~subsection 1~~ a protected party which is filed within ninety
13 days prior to the expiration of a modified no-contact order,
14 the court shall modify and extend the no-contact order for an
15 additional period of five years, unless the court finds that
16 the defendant no longer poses a threat to the safety of the
17 victim, persons residing with the victim, or members of the
18 victim's family. The number of modifications extending the
19 no-contact order permitted by this section is not limited.

20 Sec. 7. NEW SECTION. **664A.9 Termination of no-contact**
21 **order.**

22 Upon the filing of an application by the state or a protected
23 party, the court may terminate a no-contact order if the court
24 finds that the defendant no longer poses a threat to the safety
25 of the victim, persons residing with the victim, or members of
26 the victim's family.

27 Sec. 8. Section 907.3, subsection 1, paragraph i, Code 2013,
28 is amended to read as follows:

29 *i.* The offense is a ~~conviction for or plea of guilty to a~~
30 ~~violation of section 664A.7 or a finding of contempt pursuant~~
31 to section 664A.7.

32 Sec. 9. Section 907.3, subsection 2, paragraph b, Code
33 2013, is amended to read as follows:

34 *b.* ~~Section 664A.7 or for~~ For contempt pursuant to section
35 664A.7.

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EXPLANATION

2 This bill relates to the issuance of and violations of civil
3 protective orders and criminal no-contact orders, and modifies
4 penalties.

5 Current law defines a no-contact order as a court order
6 issued in a criminal proceeding requiring a defendant to have
7 no contact with the alleged victim, persons residing with the
8 alleged victim, or members of the alleged victim's immediate
9 family, and to refrain from harassing the alleged victim,
10 persons residing with the alleged victim, or members of the
11 alleged victim's family. A protective order is defined as a
12 protective order issued pursuant to Code chapter 232 (juvenile
13 justice), a court order or court-approved consent agreement
14 entered pursuant to Code chapter 236 (civil domestic abuse),
15 including a valid foreign protective order, a temporary or
16 permanent protective order or order to vacate the homestead
17 under Code chapter 598 (dissolution of marriage and domestic
18 relations), an order that establishes conditions of release
19 or is a protective order or sentencing order in a criminal
20 prosecution arising from a domestic abuse assault (criminal
21 domestic abuse), or a civil injunction issued to restrain
22 harassment or intimidation of victims or witnesses in a
23 criminal case. The bill amends the definition of protective
24 order to eliminate language allowing for the issuance of a
25 protective order in criminal proceedings. The bill amends a
26 related provision allowing the court to issue a no-contact
27 order as a result of a violation of a protective order.

28 Current law allows a court to issue a temporary no-contact
29 order and a permanent no-contact order. The bill eliminates
30 the distinction between temporary and permanent no-contact
31 orders.

32 Current law provides for a mandatory arrest procedure for
33 violations of no-contact orders but not for violations of
34 protective orders. The bill amends this provision to provide
35 that a person who violates a protective order is also subject

1 to mandatory arrest.

2 Under current law, if a person violates a no-contact order or
3 a protective order, the person may be charged with a criminal
4 offense (simple misdemeanor) or may be held to be in contempt
5 of court. The bill eliminates the criminal offense option
6 for violations of no-contact orders or protective orders. A
7 person held in contempt for a violation of a no-contact order
8 or a protective order is subject to confinement in the county
9 jail for a minimum of seven days and a maximum of 180 days per
10 violation. A \$500 fine may also be imposed.

11 The bill allows the court to terminate a no-contact order
12 if the court finds that the defendant no longer poses a threat
13 to the safety of the victim, persons residing with the victim,
14 or members of the victim's family upon the filing of an
15 application by the state or a protected party.

16 The bill makes conforming changes.