



Iowa General Assembly

2006 Legal Updates

Legislative Services Agency – Legal Services Division

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Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

NO-CONTACT ORDERS - HARASSMENT

Filed by the Iowa Supreme Court
February 3, 2006

State v. Wiederien
No. 109/04-0815

http://www.judicial.state.ia.us/supreme_court/recent_opinions/20060203/04-0815.asp

Background Facts and Procedure. The defendant was charged with the crime of harassment in the third degree in violation of Iowa Code §708.7. At the defendant's initial appearance in court, the magistrate issued a no-contact order pursuant to Iowa Code §708.12 ordering the defendant to have no contact with the alleged victim. After a bench trial, the magistrate found the defendant not guilty on the harassment charge, but found that the alleged victim "had a legitimate right to feel nervous and afraid" and continued the no-contact order for two years from the original issue date. The defendant appealed the continuance of the no-contact order.

Issue on Appeal. Whether the district court has the authority to continue a no-contact order in a harassment case upon acquittal of the defendant on the underlying harassment charge.

Analysis. The Iowa Supreme Court's analysis focused on statutory interpretation of Iowa Code §708.12. That section provides, in relevant part:

When a person arrested for harassment in violation of section 708.7..., is brought before a magistrate for initial appearance... and the magistrate finds probable cause to believe that a violation of section 708.7... has occurred and that the presence of or contact with the defendant poses a threat to the safety of the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, the magistrate shall enter an order which shall require the defendant to have no contact with the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, and to refrain from harassing the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, in addition to any other conditions of release determined and imposed by the magistrate....

...The order has force and effect until it is modified or terminated by subsequent court action in a contempt proceeding or the criminal or juvenile court action and is reviewable in the manner prescribed in section 811.2. Upon final *disposition* of the criminal or juvenile court action, the court shall make a determination whether the no-contact order should be modified or terminated. If a defendant is convicted for, receives a deferred judgment for, or pleads guilty to a violation of section 708.7..., the court shall modify the no-contact order issued by the magistrate to provide that the no-contact order shall continue in effect for a period of five years from the date that the judgment is entered or the deferred judgment is granted, regardless of whether the defendant is placed on probation (emphasis added).

In determining the word "disposition" to be ambiguous and therefore subject to interpretation, the Court opined that the word could be interpreted to include a situation where a defendant is acquitted of the underlying harassment charge and a situation where a defendant is convicted for, receives a deferred judgment for, or pleads guilty to the underlying harassment charge. In applying the principles of statutory construction, the Court stated that Iowa Code §708.12 specifically provides the court with the express authority to extend a no-contact order if a defendant is convicted for, receives a deferred judgment for, or pleads guilty to a harassment charge, but does not contain any similar express standards or guidelines as to when the court may extend a no-contact order when the court acquits a defendant on the

underlying harassment charge. The Court stated further that:

The legislature's failure to define the burden of proof and the circumstances in which a court can extend a no-contact order after an acquittal not only fails to give the defendant notice as to when the court will extend the order, but also leads to an arbitrary and discriminatory enforcement of the statute on an ad hoc and subjective basis [in violation of the vagueness and uncertainty of prohibitions of the Due Process Clause of the Fourteenth Amendment to the United States Constitution].

The Court therefore concluded that Iowa Code §708.12, subsection 2, did not allow the magistrate the authority to continue a no-contact order when the defendant is acquitted of the underlying harassment offense.

Conclusion. The Court reversed the judgment of the district court and remanded the case back to the district court to issue judgment consistent with the Court's opinion.

Dissent. Justice Cady filed a dissent in this case, taking issue with the majority's method of statutory interpretation and with the appropriate standard of proof to be applied to the issuance of no-contact orders in cases such as this. Justice Cady opined that the determination of whether to extend the issuance of a prior no-contact order in a harassment case is a collateral civil matter and based only upon a determination of probable cause and a need to protect the safety of victims, which is a "much less exacting" standard than the reasonable-doubt standard necessary to convict a person of the crime of harassment. He noted that reviewing courts are obligated to presume statutes to be constitutional and that courts are obligated to look beyond a statute to determine the appropriate standard of proof when it is absent from a statute. He concluded that the legislature, concerned with its goal of protecting victims of harassment and stalking, intended the court to determine whether to extend or modify a no-contact order in all instances and not just in instances of guilt at the conclusion of the underlying criminal case, as the need to protect a victim is not necessarily eliminated with an acquittal. He further stated that the legislature properly assumed that a previously issued no-contact order entered in a harassment case should not automatically terminate at the conclusion of the underlying criminal proceeding, but that the court should determine whether the no-contact order should be extended or modified.

Editor's Note: House File 2652, effective July 1, 2006, consolidated certain provisions relating to the issuance of and violations of certain civil protective orders and criminal no-contact orders into new Code chapter 664A, including Iowa Code §708.12. See H.F. 2652.

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