



Senate

General Assembly

File No. 369

February Session, 2002

Substitute Senate Bill No. 334

Senate, April 8, 2002

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING DOMESTIC VIOLENCE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2002*) (a) A person is guilty of
2 criminal violation of a restraining order when an order issued
3 pursuant to section 46b-15 of the general statutes, as amended by this
4 act, has been issued against such person, and such person violates such
5 order.

6 (b) Criminal violation of a restraining order is a class A
7 misdemeanor.

8 Sec. 2. (NEW) (*Effective October 1, 2002*) (a) The Superior Court shall
9 refer any person who applies for a restraining order in a domestic
10 violence situation to a victim advocate or domestic violence counselor
11 to ensure that said person understands his or her obligations to appear
12 for a hearing pursuant to section 46b-15 of the general statutes, as
13 amended by this act.

14 (b) If a person found guilty of violating a restraining order under
15 section 1 of this act is not sentenced to a term of imprisonment, the
16 court shall state for the record the reasons for such decision.

17 Sec. 3. Section 53a-223 of the general statutes is repealed and the
18 following is substituted in lieu thereof (*Effective October 1, 2002*):

19 (a) A person is guilty of criminal violation of a protective order
20 when an order issued pursuant to subsection (e) of section 46b-38c, or
21 section 54-1k or 54-82r has been issued against such person, and such
22 person violates such order.

23 (b) Criminal violation of a protective order is a class [A
24 misdemeanor] D felony.

25 Sec. 4. Section 53a-40d of the general statutes is repealed and the
26 following is substituted in lieu thereof (*Effective October 1, 2002*):

27 (a) A persistent offender of crimes involving assault, stalking,
28 trespass, threatening, harassment, [or] criminal violation of a
29 protective order or criminal violation of a restraining order is a person
30 who (1) stands convicted of assault under section 53a-61, stalking
31 under section 53a-181d, threatening under section 53a-62, as amended,
32 harassment under section 53a-183, criminal violation of a protective
33 order under section 53a-223, as amended by this act, criminal violation
34 of a restraining order under section 1 of this act or criminal trespass
35 under section 53a-107 or 53a-108, and (2) has, within the five years
36 preceding the commission of the present crime, been convicted of a
37 capital felony, a class A felony, a class B felony, except a conviction
38 under section 53a-86 or 53a-122, a class C felony, except a conviction
39 under section 53a-87, 53a-152 or 53a-153, or a class D felony under
40 sections 53a-60 to 53a-60c, inclusive, 53a-72a, 53a-72b, 53a-95, 53a-103,
41 53a-103a, 53a-114, 53a-136 or 53a-216, assault under section 53a-61,
42 stalking under section 53a-181d, threatening under section 53a-62, as
43 amended, harassment under section 53a-183, criminal violation of a
44 protective order under section 53a-223, as amended by this act,
45 criminal violation of a restraining order under section 1 of this act, or

46 criminal trespass under section 53a-107 or 53a-108 or has been released
47 from incarceration with respect to such conviction, whichever is later.

48 (b) When any person has been found to be a persistent offender of
49 crimes involving assault, stalking, trespass, threatening, harassment,
50 [or] criminal violation of a protective order or criminal violation of a
51 restraining order, and the court is of the opinion that [his] such
52 person's history and character and the nature and circumstances of
53 [his] such person's criminal conduct indicate that an increased penalty
54 will best serve the public interest, the court shall, in lieu of imposing
55 the sentence authorized for the crime under section 53a-36 or section
56 53a-35a, as applicable, impose the sentence of imprisonment
57 authorized by said section 53a-36 or section 53a-35a for the next more
58 serious degree of misdemeanor or felony, except that if the crime is a
59 class A misdemeanor the court shall impose the sentence of
60 imprisonment for a class D felony, as authorized by section 53a-35a.

61 Sec. 5. Subsection (b) of section 54-1g of the general statutes is
62 repealed and the following is substituted in lieu thereof (*Effective*
63 *October 1, 2002*):

64 (b) Any arrested person who is charged with a violation of section
65 53a-223, as amended by this act, or a violation of section 1 of this act
66 shall be promptly presented to the superior court next sitting for the
67 geographical area where the offense is alleged to have been committed.
68 If the alleged offense was committed in a geographical area of the
69 Superior Court other than the geographical area where the protective
70 or restraining order was issued, the prosecutorial official for the
71 geographical area of the Superior Court where the alleged offense was
72 committed shall notify the prosecutorial official for the geographical
73 area where the protective or restraining order was issued of the alleged
74 violation of such protective or restraining order. On motion of any
75 party or the court, the prosecution of such offense may be transferred
76 to the superior court for the geographical area where the protective or
77 restraining order was issued.

78 Sec. 6. Subsection (c) of section 54-69 of the general statutes is

79 repealed and the following is substituted in lieu thereof (*Effective*
80 *October 1, 2002*):

81 (c) Notwithstanding the provisions of subsection (b) of this section,
82 a hearing may be had on an application by any such state's attorney
83 without a copy of such application and notice of the hearing being
84 served upon the surety or sureties upon such bond, if any, the
85 appropriate bail commissioner and the accused person if the accused
86 person is charged with the commission of a family violence crime, as
87 defined in section 46b-38a, or a violation of section 53a-181c, 53a-181d,
88 53a-181e, [or] 53a-223, as amended by this act, or section 1 of this act
89 and is being presented at the next sitting of the Superior Court as
90 required by section 54-1g, as amended by this act.

91 Sec. 7. (NEW) (*Effective October 1, 2002*) Upon the receipt of a report
92 of suspected abuse of any child committed to the Commissioner of
93 Children and Families as delinquent, the Department of Children and
94 Families shall immediately notify the child's legal guardian and any
95 attorney of record for such child in any court proceeding of such
96 report. If, after investigation, the department substantiates the
97 reported abuse, the department shall immediately notify such legal
98 guardian, such attorney, the judge who ordered the commitment of the
99 child to the commissioner and the Office of the Child Advocate of the
100 substantiation of the reported abuse.

101 Sec. 8. Subsection (e) of section 46b-15 of the general statutes, as
102 amended by section 12 of public act 01-130, is repealed and the
103 following is substituted in lieu thereof (*Effective October 1, 2002*):

104 (e) The applicant shall cause notice of the hearing pursuant to
105 subsection (b) of this section and a copy of the application and of any
106 ex parte order issued pursuant to subsection (b) of this section to be
107 served on the respondent not less than five days before the hearing.
108 Upon the granting of an ex parte order, the clerk of the court shall
109 provide two certified copies of the order to the applicant and a copy to
110 the Family Division. Upon the granting of an order after notice and
111 hearing, the clerk of the court shall provide two certified copies of the

112 order to the applicant and a copy to the Family Division and a copy to
 113 the respondent. Every order of the court made in accordance with this
 114 section after notice and hearing shall contain the following language:
 115 "This court had jurisdiction over the parties and the subject matter
 116 when it issued this protection order. Respondent was afforded both
 117 notice and opportunity to be heard in the hearing that gave rise to this
 118 order. Pursuant to the Violence Against Women Act of 1994, 18 USC
 119 2265, this order is valid and enforceable in all fifty states, any territory
 120 or possession of the United States, the District of Columbia, the
 121 Commonwealth of Puerto Rico and tribal lands." Immediately after
 122 making service on the respondent, the state marshal shall provide a
 123 true and attested copy of any ex parte order including a cover sheet
 124 stating the date and time the respondent was served to the law
 125 enforcement agency for the town in which the applicant resides. If the
 126 respondent was not served in such town, the state marshal shall
 127 immediately transmit by facsimile a true and attested copy to the law
 128 enforcement agency for the town in which the respondent was served.
 129 The clerk of the court shall send a certified copy of any ex parte order
 130 and of any order after notice and hearing to the law enforcement
 131 agency for the town in which the applicant resides and, if the
 132 respondent resides in a town different than the town in which the
 133 applicant resides, to the law enforcement agency for the town in which
 134 the respondent resides, within forty-eight hours of the issuance of such
 135 order. If the applicant is employed in a town different than the town in
 136 which the applicant resides, the clerk of the court shall, upon the
 137 request of the applicant, send a certified copy of any such order, to the
 138 law enforcement agency for the town in which the applicant is
 139 employed within forty-eight hours of the issuance of such order.

This act shall take effect as follows:	
Section 1	<i>October 1, 2002</i>
Sec. 2	<i>October 1, 2002</i>
Sec. 3	<i>October 1, 2002</i>
Sec. 4	<i>October 1, 2002</i>
Sec. 5	<i>October 1, 2002</i>
Sec. 6	<i>October 1, 2002</i>

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Fund-Type	Agency Affected	Current FY \$	FY 03 \$	FY 04 \$
GF - Revenue Gain	Judicial Dept.	None	Minimal	Minimal
GF - Cost	Correction, Dept.	None	Potential Significant	Potential Significant
GF - Cost	Children & Families, Dept.	None	Minimal	Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill makes the violation of a restraining order in a domestic violence situation a crime, and it increases the criminal penalty for the violation of a protective order. These changes are expected to increase state revenue from fines. They could also result in a significant state cost from incarceration. The Department of Children and Families would incur minimal costs to provide written notification of abuse pursuant to Section 7 of the bill.

Judicial Department / Department of Correction

The bill makes the violation of a restraining order related to domestic violence a class A misdemeanor that is punishable by: (1) up to 1 year imprisonment, and (2) up to a \$2,000 fine. The superior court issues approximately 5,500 restraining orders related to domestic violence annually. It is estimated that there would be 750 violations of the bill’s prohibition involving restraining orders each year, with

approximately 300 convictions.¹ The resulting revenue is expected to be minimal (less than \$20,000) because fines are rarely assessed for individuals convicted of similar crimes.² The Judicial Department would be able to handle additional criminal cases under the bill within available resources. However, to the extent that more cases are added to superior court dockets, the backlog would grow. In addition, the caseload for adult probation officers would also increase under the bill. The anticipated increase could be absorbed by the Judicial Department within available appropriations.

The bill increases the penalty for violation of a protective order (from a class A misdemeanor to a class D felony, which is punishable by 1 - 5 years imprisonment and a fine of up to \$5,000). Additional revenue is expected to be minimal. To the extent that this bill results in an increase in the number of violators who receive prison sentences, there would be significant costs to the state. If 10% of the estimated 300 convictions received prison sentences, there would be an annual cost of \$780,000 for incarceration.

The bill requires state marshals to serve local police departments in the towns where the applicant lives. This conforms statute to current practice so there is no fiscal impact to the Judicial Department, which pays the fee for service when the applicant is indigent.

The bill also requires the court to refer an applicant for a restraining order in a domestic violence situation to a victim advocate or domestic violence counselor. These services would be rendered by private providers under contract with the court. Approximately \$1 million has been made available each year for this purpose from the federal government and the state's criminal injuries compensation fund. It is anticipated that any significant increase in referrals resulting from the bill could be handled through a future reallocation of grant awards

¹ In FY 01 there were 3,000 offenses under current law prohibiting the violation of a protective order. This is about 14% of the total number of 22,000 protective orders issued annually. Approximately 40% of offenders are convicted. A similar rate of criminal violations and conviction is expected for restraining orders.

² Including criminal trespass and violation of protective orders.

among private providers.

Department of Children and Families

It is anticipated that the Department of Children and Families will incur minimal additional postage costs, which can be accommodated within the agency's anticipated budgetary resources, to provide written notification of reported and/or substantiated abuse of an adjudicated delinquent as specified in Section 7. There are currently 449 committed delinquents under the agency's oversight. It should be noted that the required notifications are to be made "immediately." The ability of the agency to comply with this time frame is uncertain.

OLR Bill Analysis

sSB 334

AN ACT CONCERNING DOMESTIC VIOLENCE**SUMMARY:**

This bill (1) makes violating a family violence restraining order a crime; (2) increases the penalty for violating a protective order; (3) subjects restraining order violators to enhanced penalties as persistent offenders; (4) requires state marshals to give copies of notices of *ex parte* restraining orders to police officials; (5) requires the court to refer people who apply for restraining orders to a victim advocate or domestic violence counselor; and (6) requires the Department of Children and Families (DCF) to notify guardians, attorneys, and others when it receives a report about abuse of a delinquent child committed to its custody.

EFFECTIVE DATE: October 1, 2002

RESTRAINT AND PROTECTIVE ORDERS***Penalty for Violating a Restraint Order***

The bill subjects a person who violates a family violence restraining order to up to one year in prison, a fine of up to \$2,000, or both (by making violation a class A misdemeanor). Under existing law, which the bill does not change, a restraining order violator can be found in contempt of court, which is punishable by imprisonment for up to six months, a fine of up to \$500, or both. The bill requires a judge who does not sentence a restraining order violator to prison to state his reasons for the record. It applies to restraining order violators the same arraignment and bail modification procedures that currently apply to protective order violators.

Penalty for Violating a Protective Order

The bill raises the penalty for violating a protective order from a class A misdemeanor to a class D felony, which is punishable by one to five years in prison, a fine of up to \$5,000, or both. It applies to orders

protecting against family violence, stalking, and witness harassment.

Restraint Order Subjects as Persistent Offenders

The bill subjects a restraining order violator to the enhanced penalty for persistent offenders if, in addition to violating the order, he has within the previous five years been convicted of or released from prison for committing:

1. a capital or class A felony;
2. a class B felony, except promoting prostitution in the first degree and 1st degree larceny;
3. a class C felony, except promoting prostitution in the second degree and bribing jurors;
4. 2nd or 3rd degree assault or criminal trespass, 3rd degree burglary or robbery, 3rd degree sexual assault, 2nd degree stalking or harassment; or
5. threatening, unlawful restraint, criminal use of a firearm, reckless burning, or violating a protective order.

The bill also subjects a person who committed any of the above crimes to the persistent offender penalty if, within the five previous years, he was convicted of violating a restraining order.

By law, the enhanced penalty is the sentence for the next more serious degree of the crime. The enhanced penalty for violating a restraining order would be the sentence for a class D felony: one to five years in prison, a fine of up to \$5,000, or both. Before imposing the enhanced penalty, the court must consider the defendant's history and character and the nature of the circumstances of his criminal conduct.

Restraint Order Notices

The law requires the person who applies for a restraining order to have notice served on its subject (the respondent) of (1) any *ex-parte* order issued because of immediate physical danger and (2) the required hearing on the application. The bill requires the state marshal, immediately after serving notice of an *ex-parte* order, to provide an attested copy of it to police officials in the town where the applicant lives. The copy must state the date and time notice was served. If service did not occur in the town where the applicant lives, the marshal must immediately send a facsimile to the police in the

town where it was served.

Referral to Victim Advocate or Counselor

The bill requires the court to refer applicants for a restraining order in a domestic violence situation to a victim advocate or domestic violence counselor. The advocate or counselor must ensure that the applicant understands the obligation to appear at the hearing on the application.

NOTICE ABOUT ABUSED DELINQUENTS

The bill requires DCF to notify immediately the legal guardian and the attorney of record of any delinquent child committed to it when it receives a report that the child has been abused. If DCF substantiates the report, it must immediately notify the guardian, the attorney, the judge who ordered the commitment, and the child advocate. (In some cases where a child is committed to DCF as both (1) abused, neglected, or mentally ill and (2) delinquent, DCF is the legal guardian.)

BACKGROUND

Restraining and Protective Orders

Restraining orders differ from protective orders in that the former are civil and can be issued without the accused person being arrested. Protective orders in a family violence situation are criminal and are issued after the accused has been arrested for committing a family violence crime.

COMMITTEE ACTION

Select Committee on Children

Joint Favorable Substitute Change of Reference

Yea 11 Nay 0

Judiciary Committee

Joint Favorable Report

Yea 40 Nay 0