

STATEMENT OF PURPOSE

RS23556

The purpose of this legislation is to amend Idaho Code 18-920 Violation of No Contact Order, to clarify that "the court may issue an order forbidding the defendant from engaging in prohibited conduct defined by the order."

Idaho Code 18-920 Violation of No Contact Order currently allows a judge to issue a no contact order in a criminal case prohibiting defendants from contacting their victims. Idaho Code 18-920 reads "the court may issue an order forbidding contact with another person." Idaho Criminal Rule 46.2 is a procedural rule that sets forth the minimum requirements for a valid no contact order and provides that a no contact order must contain "a distance restriction" and a warning that "a violation of the order may be prosecuted as a separate crime."

In a recent decision, State v. Herren, the Idaho Supreme Court stated that "the act of remaining within 100 feet is not "contact" as defined by the order. The Court further states, "the order states that 'defendant shall not contact or attempt to contact ... or knowingly remain within 100 feet of the protected person.' The word "or" is disjunctive, meaning that it is a conjunction used to introduce an alternative. Thus the order unmistakably conveys that the meaning of "contact" and "knowingly remain" are distinct from one another."

As it now stands, an individual who violates a no contact order by knowingly remaining within a distance restriction cannot be guilty of a violation of that no contact order unless there is actual contact. A victim of domestic violence who receives a no contact order would not be protected under an order if his/her partner showed up at their work, followed them, or sat outside their home as long as there was no "contact."

This legislation closes that loophole and provides protection for victims of crime. This amendment specifies that it is not "contact" that constitutes a violation of the order and thus a separate crime, rather it is the violation of the order itself that may be prosecuted as a separate crime.

FISCAL NOTE

The fiscal impact is difficult to determine with certainty, as it will depend on the increased number of offenders who are convicted, if any, under this statute. The potential impact to the General Fund would be equal to the cost of imprisoning the additional number of offenders charged, convicted, and sentenced as a result of this amendment.

Contact:

Holly Koole Rebholtz
(208) 631-4931