

SB 450

There are 10 distinct changes that need to be considered with respect to this bill.

(A)

Under existing law, NRS 193.166 provides an enhancement for certain TPO violations:

NRS 193.166. Additional penalty: Felony committed in violation of order for protection or order to restrict conduct.

1. Except as otherwise provided in NRS 193.169, a person who commits a crime that is punishable as a felony, other than a crime that is punishable as a felony pursuant to subsection 5 of NRS 200.591, in violation of:

- (a) A temporary or extended order for protection against domestic violence issued pursuant to NRS 33.020;
- (b) An order for protection against harassment in the workplace issued pursuant to NRS 33.270;
- (c) An order for protection against domestic violence issued in an action or proceeding brought pursuant to title 11 of NRS; or
- (d) A temporary or extended order issued pursuant to NRS 200.591 [Stalking/Harassment],

shall be punished by imprisonment in the state prison, except as otherwise provided in this subsection, for a term equal to and in addition to the term of imprisonment prescribed by statute for that crime. If the crime committed by the person is punishable as a category A felony or category B felony, in addition to the term of imprisonment prescribed by statute for that crime, the person shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 5 years. The sentence prescribed by this section runs concurrently or consecutively with the sentence prescribed by statute for the crime, as ordered by the court.

2. The court shall not grant probation to or suspend the sentence of any person convicted of attempted murder, battery which involves the use of a deadly weapon, or battery which results in substantial bodily harm if an additional term of imprisonment may be imposed for that primary offense pursuant to this section.

3. This section does not create a separate offense but provides an additional penalty for the primary offense, whose imposition is contingent upon the finding of the prescribed fact.

SB 450 adds "[a] temporary or extended order for the protection of a child issued pursuant to NRS 33.400" to the list above. In other words, if a person commits a crime that is punishable as a felony, in violation of a Harm to Minors TPO, the person must be punished by imprisonment in the state prison for a term equal to and in addition to the term of imprisonment prescribed by statute for that crime.

(B)

All the TPO types now clarify that TPO relief is "in addition to" any other relief provided by law. Therefore, a person is not precluded from filing for one type of TPO just because they have also applied for another type.

(C)

The Stalking TPO and Harm to Minors TPO's have been clarified to emphasize that the scope of protection for victims includes, but is not limited to, family and household members. For example, a TPO can restrict the defendant from harassing the victim's boyfriend, even though he is not a member of the victim's "household" or "family."

(D) Very Important!

Under existing law relating to DV TPO's and WPH TPO's, a judge can order "such other relief as the court deems necessary" to protect the victim.

This power has now been given to the judges in **Stalking TPO cases and Harm to Minors TPO cases**.

(E) Very Important!

For Stalking and Harm to Minors TPO's, there is a new standard for granting an extended order. Under this new rule, "[a]n extended order may be granted only after:

- (a) Notice of the petition for the order and of the hearing thereon is served upon the adverse party pursuant to the Nevada Rules of Civil Procedure;
and
- (b) A hearing is held on the petition.

In other words, the defendant is entitled to a copy of the application for the extended order **and** a notice of hearing issued by the Court, and then the extended order can be issued after the hearing.

Also, service of the application/notice must be performed pursuant to the JCRCP (Justice Court version of NRCP). Specifically, JCRCP 4 allows the victim to serve the defendant "personally, or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process." This is the most common method of service.

NOTE: For Workplace TPO's, notices for all types of hearings (temporary and extended) require personal service. Even prior to this session, NRS 33.300(2) has stated that "[s]ervice of an application for an order, the notice of hearing thereon and the order

must be served upon the person who allegedly committed the [workplace] harassment pursuant to the Nevada Rules of Civil Procedure.”

(F)

The standard TPO penalties apply "[u]nless a more severe penalty is prescribed by law for the act that constitutes the violation of the order." For example, if a defendant attempts to murder the victim, the penalty for attempted murder would "trump" the penalty for the TPO violation.

(G)

In the past, there was some confusion about whether a police officer had to have "reasonable cause" or "probable cause" to believe that the defendant had either "received" the TPO or "been served" with the TPO before the defendant could be arrested for a TPO violation. **SB 450** now clarifies that the officer must have "**probable cause**" to believe that the defendant has "**been served**" with the TPO before the defendant can be arrested.

(H)

All TPO's require an "intentional" violation. Ex.: Bumping into the victim at a rock concert is not an "intentional" violation that can lead to criminal penalties.

(I)

Under prior law relating to workplace TPO's, there was an ambiguity about whether the temporary order would remain in effect until the hearing on the extended order was held. **SB 450** clears up this ambiguity by adding this language:

"If such an application [for an extended order] is filed, the temporary order remains in effect until the hearing on the application for an extended order is held."

(J)

Under prior law relating to workplace harassment TPO's, the following language applied:

NRS 33.350 Penalties for violation of order.

1. A person who violates a temporary or extended order for protection against harassment in the workplace is guilty of a misdemeanor, unless a more severe penalty is prescribed by law for the act that constitutes the violation of the order. If the violation is accompanied by a violent physical act by that person against a person protected by the order, the court shall:

(a) Impose upon the person who violated the order a fine of \$1,000 or require him to perform a minimum of 200 hours of community service;

(b) Sentence the person who violated the order to imprisonment for not fewer than 5 days nor more than 6 months;

(c) Order the person who violated the order to reimburse the employer, in an amount determined by the court, for all costs and attorney's fees incurred by the employer in seeking to enforce the order, and for all medical expenses of the employer and any person protected by the order that were incurred as a result of the violent physical act; and

(d) Order the person who violated the order to participate in and complete a program of professional counseling, at his own expense, if such counseling is available.

2. The person who violates a temporary or extended order for protection against harassment in the workplace shall comply with the order for reimbursement of the employer or any other person protected by the order before paying a fine imposed pursuant to this section.

SB 450 deletes all the underlined language above. Similar language was deleted from the DV TPO type in 2003, but the Legislature overlooked the WPH TPO when making the deletion.