

2017 HOUSE JUDICIARY

HB 1222

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1222
1/23/2017
27227

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the process for seeking a sexual assault restraining order; and to provide a penalty.

Minutes:

1,2

Chairman K. Koppelman: Opened the hearing on HB 1222.

Rep. Delmore: In support of the bill. This bill deals with protection for sexual assault victims. The bill is modeled after language in Montana and South Dakota. We are placing this in a special part of the code because there have been problems granting protection orders because of lack of physical violence or the term relationship not being sufficient. Sexual assault is the most unreported crime in the US. 83% of victims are under the age of 25. Creates a special place in statutes for sexual assault victims. I ask for your favorable consideration.

Representative Roers Jones: Are we going to hear about how this differs from current restraining orders. Then I will wait.

Rep. Delmore: It creates another protection order rather than having to go under that statute. It would follow what we do for domestic violence.

Janelle Moos, Executive Director of the CAWS ND: (#1) (4:20-8:00) What we are proposing in this and what is currently outlined in a disorderly conduct restraining order. It outlines what specifically the offender can be restricted from. Domestic violence orders are very challenging to get. The burden of proof is difficult. Most judges look for the recent incident of physical violence. Often it doesn't arise to that so judges think there is not enough to bump it up to the domestic violence protection order. The relationship issue; if you met someone on line and maybe it doesn't arise to what a family or household member is defined in Chapter 14 so that is another barrier that many victims of sexual assault face. With disorderly conduct orders if you can't have excess to the protection order; don't need that standard; most judges and clerks of court will hand your paper work to fill out a disorderly conduct order. It does have similar process and protections.

Representative Nelson: Nationally domestic violence restraining orders restricts you from buying a firearm? Would this still restrict you from buying a firearm?

Janelle Moos: We did not discuss firearms in regards to this. ND does have laws that outline this in Chapter 14. It is a problem that we run into across the state. This doesn't specifically address that.

Chairman K. Koppelman: With respect to these kinds of restraining orders, you talked about burden of proof; this would occur on line 16 & 17 of page 2 so the court finds after the hearing reasonable grounds to believe the respondent created sexual assault or in other words to issue this kind of restraining order a hearing would be held? It wouldn't necessarily be a commission of a crime.

Janelle Moos: Yes that is correct. Many victims may come forward and ask for relief from the court or the crisis center and may not want to come forward to the court. It defines sexual assault.

Chairman K. Koppelman: At that hearing is the subject of the proposed order summoned to the court and allowed to give testimony?

Janelle Moos: that is correct. After the temporary order is issued the respondent is given notice that an order has been requested and they are given notice that the hearing will be on such a date; they can come in and the process will exist.

Chairman K. Koppelman: When you talk about domestic violence protection orders it seems to me there can be circumstances which don't rise to the level of criminal activity such as harassment; metal cruelty and other kinds of things that could give rise to a restraining order. If someone has committed sexual assault it is a crime. If a restraining order is issued it could say the person is guilty of a crime without actually being charged with or standing trial. I am looking at the burden of proof. The issue was in the understandable quest to deal with sexual assault on college campuses they were deemed unbalanced. The due process was leveled in ND by saying bring an accusation and let's talk about that. How does this work?

Janelle Moos: This is a civil protection order. It doesn't mean this isn't a criminal case that maybe moving forward separate where the acquiesced has their right to be heard and the victim has the right to testify.

Chairman K. Koppelman: When you are talking about domestic restraining order kinds of things. There could be less than criminal activity that gives rise to those. It seems here that is not the case. Sexual assault is a crime. Let's say one of these restraining orders are issued; 14 days go by and the individual is brought to court, a judge says I think this needs to be a permanent restraining order. If they are found not guilty, but we have a civil order; how does that work and there is probably nothing worse than sexual assault but being falsely acquiesced of it which would be as equally as terrible. I am trying to balance that.

Janelle Moos: (18:40) That is what happened in a domestic violence case right now.

We have kept them separate. Being falsely accused of sexual assault. You can look at studies that have been done for many years that sexual assault is no more falsely reported than any other crime across the country.

Susan Bealer, Resident of Mandan: (20:12) This is a good bill. It would have helped in our past family situation. Discussed a crime that had happened to them 20 years ago. Make it includes non-custodial parents. So if they know about an abuse that took place they could report it.

Chairman K. Koppelman: So the court is not recognizing this as fitting into that?

Janelle Moos: The two reasons noted is recent that are most often noted is that there is no physical violence and most judges look for that recent physical instance of domestic violence when they do a protection order. The other one is the relationships. If you look under Chapter 14 in order to qualify for domestic violence protection order you need to be a family or house hold member.

Opposition: None

Neutral: None

Hearing closed.

Representative Klemin: Handed out additional information (#2)

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1222
1/23/2017 #2
27233

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

"Click here to type reason for introduction of bill/resolution"

Minutes:

Chairman K. Koppelman: Opened the meeting on HB 1222. This would be specifically for sexual assault.

Representative Magrum: So the point of this is if someone is acquiesced someone of sexual assault they would file a charge and then they would get a judge to give them a temporary restraining order?

Chairman K. Koppelman: They would not file a charge because it is separate from the criminal proceeding. They could request the judge enter a restraining order an initially it would be a temporary restraining order and after 14 days there would be a hearing and the person against whom the restraining order is issued and the individual asking for it would be involved in that hearing and then the court would determine whether to make that a permanent restraining order or not.

Representative Klemin: The immediate restraining o5rder is done without giving notice to the respondent and then the hearing has to be held within 14 days before it can be made permanent. In addition, it is done without giving notice to the respondent and the hearing has to be held then with both individuals present. I think there should be an amendment on page 2, line 25 has to do with the notice that has to be in the restraining order.

Motion Made by Representative Klemin to move that amendment, page 2, line 25 after the word punishable insert as a class A misdemeanor. Seconded by Representative Maragos

Discussion:

Voice vote carried.

Representative Magrum: How does this work?

Chairman K. Koppelman: I assume they petition the court and they decide to grant a temporary restraining order.

Representative Klemin: The way the bill reads there would have to be a petition for relief; supported by an affidavit filed with the court and then the court would review it and they may grant a temporary restraining order.

Chairman K. Koppelman: Because it granting is a may it implies the court could simply take the petition and schedule a hearing and not do the temporary.

Representative Magrum: So this person who do they go to?

Chairman K. Koppelman: To the court. Maybe CAWS would help? Discussed how this would work.

Representative Vetter: It is the same process except there is no violence. It is sexual because he is stocking me. I need a restraining order before something happens.

Representative Jones: That is why Janelle Moos was talking about this. She did say they wanted this created because they wanted their own statues to be working with them. Those organizations like CAWS were going to be the main ones using this to help victims.

Chairman K. Koppelman: One of the gaps seems to be that they have been trying to do this in the domestic violence statute, but that normally implies someone that lives in your household. But if someone is a victim of a sexual assault it may not be.

Do Pass as Amended Motion Made by Representative Roers Jones: Seconded by Representative Hanson

Roll Call Vote: 13 Yes 0 No 2 Absent Carrier: Vice Chairman Karls

1/23/17 DA

17.0706.01001
Title.02000

Adopted by the Judiciary Committee

January 23, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1222

Page 2, line 25, after "punishable" insert "as a class A misdemeanor"

Renumber accordingly

2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1222

House Judiciary Committee

Subcommittee

Amendment LC# or Description: Pg 2, line 25 insert Class Period

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Klemin Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Handwritten notes in blue ink:
 ✓ Social State
 ✓ carried

Total (Yes) _____ No _____

Absent _____

Floor Assignment : _____

If the vote is on an amendment, briefly indicate intent:

Date: 1-23-17
Roll Call Vote 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1222

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 17-0706.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider

Motion Made By Rep. Roers Jones Seconded By Rep. Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	✓		Rep. Hanson	✓	
Vice Chairman Karls	✓		Rep. Nelson	—	
Rep. Blum	✓				
Rep. Johnston	—				
Rep. Jones	✓				
Rep. Klemin	✓				
Rep. Magrum	✓				
Rep. Maragos	✓				
Rep. Paur	✓				
Rep. Roers-Jones	✓				
Rep. Satrom	✓				
Rep. Simons	✓				
Rep. Vetter	✓				

Total (Yes) 13 No 0

Absent 2

Floor Assignment : Rep. Karls

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1222: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1222 was placed on the Sixth order on the calendar.

Page 2, line 25, after "punishable" insert "as a class A misdemeanor."

Renumber accordingly

2017 SENATE JUDICIARY

HB 1222

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1222
3/13/2017
Job #: 29061

- Subcommittee
 Conference Committee

Committee Clerk Signature

Jana Bellamy for *John Fetter*

Explanation or reason for introduction of bill/resolution:

Relating to the process for seeking a sexual assault restraining order; and to provide a penalty.

Minutes:

Testimony attached #

1

Chairman Armstrong called the committee to order on HB 1222. All committee members were present.

(0:00:25) Janelle Moos, CAWS North Dakota: Introduced and testified in support of the bill. (See attachment #1)

(0:03:25) Chairman Armstrong: Under the disorderly conduct, ex-parte restraining orders, they have very strict timelines both for disorderly conduct and for domestic violence and it appears in here that it doesn't. When you are writing this into code you are writing this into a neutral standpoint and I don't think this is neutral. On line 2 page 2, it seems to be taking a pretty significant assumption, that by getting a temporary one, you are going to get a permanent one. That's how it reads. I think we should go for consistency, there needs to be a definite timeline, and also the language in B needs to read more neutral.

(0:05:32) Janelle Moos: I'd be open to including the 14 days. This wasn't written in the purview of one way or another, when we worked with Legislative Council, we took information from both. Protection orders aren't handed out like candy. We have statistics that show that there is a pretty high rate of victims that don't receive protection orders.

(0:05:32) Chairman Armstrong: The ultimate goal is to make sure the victims of this are protected and that's what we're looking for. The other goal is to make sure people have confidence in the system. I don't think it's intended to read that way; I just think it does.

(0:06:32) Janelle Moos: It wasn't the intent of the drafter. If we include the language to make sure it's ex-parte and that is in place until the permanent order at 14 days.

Difference between disorderly conduct in section 12 and domestic violence in section 14.

(0:07:00) Senator Luick: Does subsection c on line 11 take care of that? It does mention the 14 days there.

(0:07:12) Chairman Armstrong: I agree it mentions it in 5, but it's not clear in subsection 3. Then it becomes an issue that the code isn't clear. That's the language, I just think we need to clean it up, up above.

(0:07:35) Janelle Moos: We can make sure they're consistent. Continued testimony from attachment #1. (Amendments??)

(0:09:40-0:10:56) Chairman Armstrong questioned, on page 2, line 25, if the language exists in chapter 14 and a brief exchange was held about terminology, placement, and punctuation.

(0:10:57) Chairman Armstrong: Is this an attempt to look at victims from that purview?

Janelle Moos: Yes, that's one way to look at it. This doesn't fit into the definition of family and household member under chapter 14. Often judges will look at the most recent. Sometimes no physical assault is part of the sexual assault. Creating a separate process for them.

(0:12:00) Senator Myrdal: Can you tell me where that research comes from and/or provide me copies of that research?

Janelle Moos: Absolutely, I can get you the actual study. Likely pulled from the National Sexual Violence Survey that's often done by CDC.

(0:12:40-0:14:15) Commentary about consistent language throughout the other similar areas.

Chairman Armstrong closed the hearing on HB 1222.

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1222 Committee Work
3/20/2017
29431

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the process for seeking a sexual assault restraining order; and to provide a penalty.

Minutes:

Attachments

1

Chairman Armstrong began the discussion on HB 1222. All committee members were present.

Chairman Armstrong went over the proposed Amendment. (see attachment 1)

Senator Larson (2:30): "I have some marks in my notes that say on line 28 change might to shall, and page 2 and 3."

Chairman Armstrong: "Yeah. I took those out of this amendment. I don't like shalls. I like shalls when you are directing the court or the prosecutors. I don't like shalls when you are directing law enforcement. I prefer to allow law enforcement to have that discretion. That's why I took the shall to a may."

Senator Luick motioned to Adopt the Amendment. **Senator Larson** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.
The motion carried.

Senator Luick motioned for Do Pass as Amended. **Senator Larson** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.
The motion carried.

Senator Myrdal carried the bill.

Chairman Armstrong ended the discussion on HB 1222.

March 20, 2017

CJ
3/20-2017
1 of 1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1222

Page 1, line 7, after "1." insert "For purposes of this section:

a. "Second or subsequent violation of a protection order" means two or more violations of protection orders.

b."

Page 1, line 20, replace "a." with "5."

Page 1, line 22, replace "(1)" with "a."

Page 1, line 23, replace "(2)" with "b."

Page 2, line 1, replace "(3)" with "c."

Page 2, remove lines 2 through 4

Page 2, line 5, replace "5." with "6."

Page 2, line 10, replace "subsection" with "subsections"

Page 2, line 10, after "4" insert "and 5."

Page 2, line 18, replace "6." with "7."

Page 2, line 22, replace "7." with "8."

Page 2, line 26, remove "by imprisonment of up to one year or a fine of up to three thousand"

Page 2, line 27, remove "dollars or both"

Page 3, line 1, replace "8." with "9."

Page 3, line 1, replace "subsection" with "subsections"

Page 3, line 1, after "4" insert "and 5."

Page 3, line 1, replace "5" with "subsection 6"

Page 3, line 2, after "misdemeanor" insert "and also constitutes contempt of court. A second or subsequent violation of a protection order is a class C felony"

Page 3, line 2, after "3" insert an underscored comma

Page 3, line 3, after "or" insert "subsections"

Page 3, line 3, after "4" insert "and 5"

Page 3, line 6, replace "9." with "10."

Page 3, line 12, replace "10." with "11."

Page 3, line 15, replace "11." with "12."

Renumber accordingly

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1222

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0706.02001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Senator Luick Seconded By Senator Larson

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1222**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0706.02001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Luick Seconded By Senator Larson

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Myrdal

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1222, as engrossed: Judiciary Committee (Sen. Armstrong, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1222 was placed on the Sixth order on the calendar.

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Page 2, line 27, remove "dollars or both"

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Page 3, line 1, after "4" insert "and 5."

Page 3, line 1, replace "5" with "subsection 6"

Page 3, line 2, after "misdemeanor" insert "and also constitutes contempt of court. A second or subsequent violation of a protection order is a class C felony"

Page 3, line 2, after "3" insert an underscored comma

Page 3, line 3, after "or" insert "subsections"

Page 3, line 3, after "4" insert "and 5"

Page 3, line 6, replace "9." with "10."

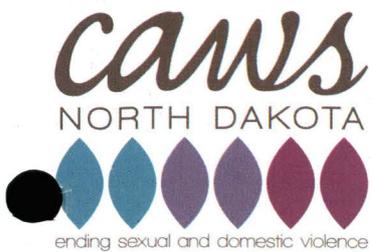
Page 3, line 12, replace "10." with "11."

Page 3, line 15, replace "11." with "12."

Renumber accordingly

2017 TESTIMONY

HB 1222



#1
1222
1-23-17
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Testimony on HB 1222
House Judiciary Committee
January 23, 2017

Chairman Koppleman and Members of the Committee:

My name is Janelle Moos and I am the Executive Director of the CAWS North Dakota. Our Coalition is a membership based organization that consists of 20 domestic violence and rape crisis centers that provide services to victims of domestic violence, sexual assault, and stalking in all 53 counties and the reservations in North Dakota. I'm speaking this morning on their behalf in support of HB 1222.

Sexual assault is the most under reported crime in the United States and one in four women and one in six men will experience sexual violence at some point in their life. Nationally, approximately 76% of the victims knew their assailant and 83% of victims were under the age of 25 at the time of their assault. Last year alone in North Dakota over 900 victims of sexual assault sought services from one of the twenty crisis centers; 40% of those victims were under the age of 18 at the time of the assault. Some adolescent sexual assaults are of course reported to the police, either by the victims themselves or by someone they disclosed to, such as a parent. In North Dakota, 70% of sexual assault victims report the assault to law enforcement.

Although crimes such as sexual assault, domestic violence, stalking and harassment can and do occur independently, they may also occur together, committed by the same abuser against the same victim. A sexual assault victim may have been stalked prior to the assault; a domestic violence victim may experience systematic rape in addition to physical and psychological abuse. The need for protection from violence cannot be underestimated.

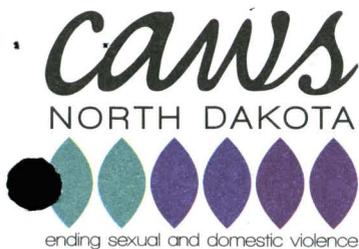
Civil protection orders for victims of domestic violence are available in every state and are typically issued by state or tribal civil courts after a showing of abuse or violence or the likelihood of imminent harm. Though states have begun to enact statutes specifically creating civil protection orders for victims of sexual assault and stalking, only a minority of states have stalking-specific civil protection orders and fewer still have civil protection orders available for victims of non-intimate partner sexual assault. If HB 1222 is passed, North Dakota would join 25 other states that have enacted sexual assault civil restraining/protection order process.

Klemm #2
1222
1-23-17

Civil protection order remedies and requirements vary in each jurisdiction but may require that the abuser maintain a certain distance from the victim, not assault or otherwise abuse the victim, and refrain from making direct or indirect contact with the victim. Similarly, in every jurisdiction there is an enforcement mechanism whereby the victim may call upon law enforcement to enforce the provisions of the civil protection order when it is violated. In these ways, civil protection orders are intended to provide tangible, specific protection for victims that have experienced domestic violence, sexual assault or stalking. If obtained, civil protection orders may result in a significant increase in safety for a victim. One study suggests that 86% of women who received a protection order reported that the abuse either stopped or was greatly reduced.

Access to justice is essential to ensure that victims of domestic violence, sexual assault and stalking receive the protection and remedies necessary to prevent and minimize the lifelong, devastating effects of these crimes. Yet the process of filing for a civil protection order, appearing at court and confronting the abuser may be understandably traumatic experiences for victims but with the help of advocacy agencies this could be one step in the process towards healing and justice after an assault so therefore, I encourage a DO PASS recommendation on HB 1222.

Thank you.



①

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Testimony on HB 1222
Senate Judiciary Committee
March 13, 2017

Chairman Armstrong and Members of the Committee:

My name is Janelle Moos and I am the Executive Director of the CAWS North Dakota. Our Coalition is a membership based organization that consists of 20 domestic violence and rape crisis centers that provide services to victims of domestic violence, sexual assault, and stalking in all 53 counties and the reservations in North Dakota. I'm speaking this morning on their behalf in support of HB 1222.

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pg. 1

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Access to justice is essential to ensure that victims of domestic violence, sexual assault and stalking receive the protection and remedies necessary to prevent and minimize the lifelong, devastating effects of these crimes. Yet the process of filing for a civil protection order, appearing at court and confronting the abuser may be understandably traumatic experiences for victims but with the help of advocacy agencies this could be one step in the process towards healing and justice after an assault so therefore, I encourage a DO PASS recommendation on HB 1222.

Thank you.

3/20/17

①

HB 1222

17.0706.02000

Sixty-fifth
Legislative Assembly
of North Dakota

INTERN DRAFT AMENDMENT ENGROSSED HOUSE BILL NO. 1222

Page 2, lines 2-4 remove "The court may issue the temporary restraining order without giving notice to the respondent. Unless otherwise terminated by the court, the temporary restraining order is in effect until a restraining order issued under subsection 5 is served" and replace with "Unless otherwise terminated by the court, an ex parte temporary sexual assault restraining order remains in effect until an order is issued under subsection 5 is served"

Page 2, line 26, insert a period after "misdemeanor"

Page 2, line 26, remove "by imprisonment of up to one year or a fine of up to three thousand"

Page 2, line 27 remove "dollars or both"

Page 3, line 2, after "misdemeanor" insert "and also constitutes contempt of court. A second or subsequent violation of any protection order is a class C felony. For purposes of this section, "first violation" means the first time any order is violated and a second or subsequent violation of any protection order includes two or more violations of protection orders."

Renumber accordingly