
Judiciary Committee

HB 2464

Title: An act relating to stalking protection orders.

Brief Description: Enacting the stalking protection order act.

Sponsors: Representatives Goodman, Rodne, Pedersen, Pearson, Hurst, Darneille, Kelley, Fagan and Dahlquist; by request of Attorney General.

Brief Summary of Bill

- Creates a civil protection order available to victims of stalking who do not qualify for a domestic violence protection order.
- Creates procedures for entry of a stalking protection order during the pendency of criminal prosecutions for stalking and related offenses.

Hearing Date: 1/26/12

Staff: Omeara Harrington (786-7136).

Background:

Protection Orders.

There are a number of protection orders a court may grant to restrict a person's ability to have contact with another person. Protection orders are civil in nature and are available to victims of domestic violence, harassment, and sexual assault, and to vulnerable adults. A court may grant an ex-parte protection order and, upon a full hearing, a final order that lasts for a fixed term or, in some cases, is permanent.

- Domestic violence protection orders are available to those who have suffered physical harm, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking by a family or household member. The order may last for a fixed time or be permanent, but if the respondent is restrained from contacting his or her minor children, the order must last for a fixed time of no longer than one year.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- Antiharassment protection orders are available to those who have been seriously alarmed, annoyed, or harassed by conduct which serves no legitimate or lawful purpose. The petitioner does not need to establish that they had any sort of special relationship with the respondent. These orders last a maximum of one year unless the court finds that the respondent is likely to resume the harassment once the order expires, in which case the duration can be for some other fixed time or permanent.
- Sexual assault protection orders are available to victims of nonconsensual sexual conduct or penetration that gives rise to a reasonable fear of future dangerous acts. These orders provide a remedy for victims of sexual assault who do not qualify for a domestic violence order of protection. The order will last for a fixed time not to exceed two years.
- Vulnerable adult protection orders protect adults with mental or physical disabilities who are victimized through abandonment, abuse, financial exploitation, or the threat thereof. These orders last for a fixed time not to exceed five years.

Additionally, the court may issue no-contact orders to protect victims during the pendency of criminal proceedings, and may also be imposed or extended as a condition of release or sentence. They may be issued before, after, or concurrently with civil protection orders. No-contact orders automatically expire at arraignment (unless extended or reissued), upon dismissal or acquittal, or upon termination of the sentence or elimination of that condition of the sentence. No-contact orders associated with criminal sexual assault proceedings may last up to two years following imprisonment or community supervision.

Protection orders and no-contact orders prohibit contact of any kind with the victim and forbid the respondent from being within a specified distance of petitioner's residence or workplace. They also commonly involve a surrender of firearms. Generally, violation of a protection order or no-contact order is a gross misdemeanor. However, a violation of some protection orders may be a class C felony under certain circumstances, such as if the person violating the order has two prior violation convictions or if the violation involved an assault or reckless endangerment.

Many protection orders follow the jurisdiction requirements for domestic violence protection orders. Superior, district, and municipal courts all have jurisdiction to issue a domestic violence protection order. However, jurisdiction is limited under some circumstances, such as when the superior court has a pending family law action involving the parties.

Stalking.

Stalking, as defined in statute, is intentionally and repeatedly harassing or following another person, placing that person in fear that the stalker intends to injure them, another person, or their or someone else's property. The fear must be reasonable under the circumstances, and the stalker either must intend to frighten, intimidate, or harass the person, or must know or reasonably should know that their conduct would elicit such a reaction. Stalking is generally a gross misdemeanor, but under certain circumstances it is a class C felony.

Some victims of stalking have grounds to petition for a domestic violence protection order; however, there is no protection order specifically available to victims of stalking who do not qualify for a protection order under the domestic violence statute. Victims of stalking may pursue an antiharassment protection order

Summary of Bill:

Procedures for stalking protection orders are created. These orders specifically apply to victims of stalking who do not qualify for a protection order under the domestic violence statutes. In the interest of preventing conflicting orders, the court is authorized to consult the judicial information system prior to entering a stalking protection order.

Filing a Petition.

Any person who is a victim of stalking conduct but who does not qualify for a domestic violence protection order may file for a stalking protection order. The petition for such an order must allege the existence of stalking conduct and be accompanied by an affidavit made under oath stating the specific reasons that the petitioner is in fear. Stalking as defined in statute, cyberstalking (stalking over an electronic medium), and any willful, continuous contacts or monitoring that would cause a reasonable person to be fearful or feel intimidated, threatened, or harassed, will qualify as "stalking conduct" for purposes of seeking a stalking protection order.

Petitions may be filed on behalf of a minor child, a vulnerable adult, or other adult whose circumstances make them unable to file on their own behalf. A child who is under 18, but as old as 16 may file without the assistance or next friend, and no guardian ad litem need be appointed to a minor 14 or older, unless the court deems it necessary.

Jurisdiction and Venue.

The petitioner must file an action in the county or municipality where the petitioner resides. Jurisdiction over these orders is the same as court jurisdiction over domestic violence protection orders. The court may assert personal jurisdiction over a nonresident for purposes of a civil stalking protection order if the nonresident has met certain qualifying criteria making Washington jurisdiction appropriate.

Service of Process.

Upon receipt of the petition, the court must hold a hearing within 14 days. The respondent must be personally served no less than five court days prior to the hearing, and, if timely service is not made, the court will set a new hearing date to accommodate further service attempts, and may institute a temporary stalking order pending the hearing.

No fee may be charged for filing or service of process, and certified copies will be provided to the petitioner at no charge.

Hearings.

The hearing may be held by telephone pursuant to court rule, to accommodate a disability, or to protect the petitioner from further stalking. Victim advocates may accompany and assist petitioners unless the court directs otherwise. Such assistance does not constitute the unlawful practice of law. If the respondent is accompanied by counsel, the court may appoint counsel to represent the petitioner.

The standard of proof for entry of a stalking protection order is proof by a preponderance of the evidence that the petitioner has been a victim of stalking conduct by the respondent.

Relief Granted in the Order.

The court can order the following relief:

- Restrain the respondent from contacting the petitioner, physically or nonphysically, directly or indirectly.
- Exclude the respondent from the petitioner's home or school, or the school or daycare of the petitioner's children.
- Prohibit the respondent from conducting any form of surveillance of the petitioner or the petitioner's children.
- Order any other injunctive relief as necessary or appropriate for the protection of the petitioner, which can include mental health and/or chemical dependency evaluation.

If the petitioner and respondent are both under 18 and attend the same school the court may order the respondent to transfer schools. Any logistical and financial obligations for the school transfer are the responsibility of the parents or legal guardians of the person restrained in the order.

Orders are entered into the computer-based criminal intelligence information system.

Ex Parte Temporary Orders.

An ex parte temporary stalking protection order must be issued if the petitioner can show by a preponderance of the evidence that they have been a victim of stalking conduct by the respondent and there is good cause to grant the remedy, regardless of the lack of notice to the respondent, because the harm to be prevented is likely to occur if the respondent is given greater notice than was actually given. An ex parte temporary stalking order is effective for a fixed period, not to exceed 14 days, and a hearing must be set for no later than 14 days from issuance of the temporary order. The respondent must be personally served with notice of the temporary order and hearing and a copy of the petition.

Final Orders.

A final protection order is effective for a fixed period of time not to exceed five years. A stalking protection order, regardless of whether it is a final order or a temporary ex parte order, may be renewed one or more times. If no change in the order is sought, the order may be renewed on the basis of the petitioner's motion or affidavit stating that there has been no material change in relevant circumstances.

Upon application with notice to all parties and after a hearing, the court may modify the terms of an existing stalking protection order.

A knowing violation of a temporary or final stalking protection order is typically a gross misdemeanor, unless the violation is for assault or the respondent has had two prior violations of a similar injunction, in which case violation is a class C felony.

Stalking Protection Orders in Conjunction with Criminal Proceedings.

Defendants arrested for stalking are required to appear in person before a judge or magistrate within one judicial day of arrest. At that time, the court must determine the necessity of imposing a stalking protection order. When appropriate, the court may also impose a stalking protection order against a person arrested for a crime involving harassment, telephone harassment, or cyberstalking. If there is no outstanding restraining or protection order, the court authorizing release may issue the order by telephone, and then issue the order in writing as soon as possible. Electronic monitoring may be ordered.

When a protection order is issued in conjunction with criminal charges, it terminates if the defendant is acquitted or the charges are dismissed. However, if the victim files an independent action for a stalking protection order, the court may maintain the order until a full hearing is conducted pursuant to the rules for the civil stalking protection order.

If the defendant is convicted of stalking, harassment, or a stalking related offense, and a condition of the sentence restricts the defendant's ability to have contact with the victim, the condition shall be recorded as a stalking protection order. A final stalking protection order entered in conjunction with a criminal prosecution remains in effect for a period of five years following the expiration of any sentence of imprisonment and subsequent period of community supervision, conditional release, probation or parole.

Other Provisions.

Felony stalking is reclassified from a class C felony to a class B felony.

Court employees, court clerks, and courthouse facilitators are added to the list of persons of whom stalking is raised from a class C felony to a class B felony.

Certain stalking offenses are added to the list of statutory aggravators, giving the court grounds to exceed the standard sentencing range without a jury factfinding. The stalking offense must have been part of a prolonged pattern involving multiple instances of abuse against one or more victims, or have occurred in front of the victim's minor children, or have involved deliberate cruelty or intimidation to qualify as an aggravating circumstance.

Appropriation: None.

Fiscal Note: Requested on January 21, 2012.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.