

# HOUSE BILL REPORT

## HB 2464

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**As Reported by House Committee On:**  
Judiciary

**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 History:**

**Committee Activity:**

Judiciary: 1/26/12, 1/30/12 [DPS].

**Brief Summary of Substitute 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.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Eddy, Hansen, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

**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

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*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.*

grant an ex parte temporary 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. These orders may last for a fixed time or be permanent, but if a respondent is restrained from contacting his or her minor children, an order must last for a fixed time of no longer than one year.
- 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 have 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. Orders 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, courts may issue no-contact orders to protect victims during the pendency of criminal proceedings, and these orders may also be imposed or extended as a condition of release or sentence. No-contact orders may be issued before, after, or concurrently with civil protection orders, and they 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.

Civil protection orders and criminal no-contact orders prohibit contact of any kind with the victim and forbid the respondent from being within a specified distance of a 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. Antiharassment protection order violations do not elevate to a class C felony.

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

#### Stalking.

Stalking, as defined in statute, is intentionally and repeatedly harassing or repeatedly 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.

Victims of stalking may pursue an antiharassment protection order. Some victims of stalking also have grounds to petition for a domestic violence protection order, but only if they have a family or dating relationship with the person who is stalking them.

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### **Summary of Substitute 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 a stalking protection 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. Both stalking and cyberstalking (stalking over an electronic medium) as defined in statute 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 age 18, but at least age 16 may file without the assistance or next friend, and no guardian ad litem need be appointed to a minor 14 years 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 stalking protection orders is the same as jurisdiction over domestic violence protection orders. The court may assert personal jurisdiction over a nonresident for purposes of a 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 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 conducted 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 stalking 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 reckless endangerment or the respondent has had two prior violations of a similar injunction, in which case the 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 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. The order remains in place for one year or until another specified expiration date. 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, and if 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 from the date of entry.

#### 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 constitutes a felony.

Certain stalking offenses are added to the list of statutory aggravators giving the court grounds to exceed the standard sentencing range.

#### **Substitute Bill Compared to Original Bill:**

The substitute bill:

- removes willful, continuous contacts, monitoring, or following that would cause a reasonable person to be fearful or feel intimidated, threatened, or harassed, from the definition of "stalking conduct;"
- removes the maximum age limit for ordering that the respondent not attend the same public or approved private elementary, middle, or high school as the petitioner;
- limits the duration of a final stalking protection order entered in conjunction with a criminal prosecution to five years from the date of entry of the order, rather than five years from the expiration of any sentence and subsequent community supervision, conditional release, probation, or parole; and
- includes references to the chapter governing stalking protection orders in the provisions of existing law that govern the orders' enforceability and sanctions.

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**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

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

**Staff Summary of Public Testimony:**

(In support) Stranger stalking is a unique situation and we do not have adequate tools to protect stranger stalking victims. The vast majority of stalking victims are family and can obtain a domestic violence order. For stranger stalking, however, there is no appropriate order other than an antiharrassment order.

Antiharassment orders are woefully inadequate and we are currently failing to protect stalking victims with these orders. The consequences of violation of an order need to fit the seriousness of why the order was placed. Antiharassment orders cannot be issued as a condition of sentence and violation of one of these orders is never a felony. There is no aggravating factor for antiharassment orders, and violations do not factor into an offender score. There is no mandatory arrest and this is something all other orders have. The conduct is not specifically labeled, so most looking at a conviction record assume that these are for neighbor disputes. A "stalking protection order" would be very meaningful.

There are only a small number of stalking victims, but for that number this order could be the difference between life and death. There are cases in which people have been murdered by stalkers in spite of having an antiharassment order. The system needs a stalking protection order to identify stalking behavior and raise the seriousness of this behavior. If judges had this order as a tool and could use Global Positioning System monitoring, some of these tragic cases could be avoided. Our laws must ensure victims of stalking have ways of protecting themselves from being victims of something far worse.

Few people are aware of cyberstalking behavior, but it is a problem. Cyberstalking poses a unique problem necessitating enforcement across state lines, and it needs to be addressed and enforced by law enforcement.

(Opposed) There is a problem with the definitional section of this bill. Those who are victims of "stalking conduct" qualify for the stalking protection order. "Stalking conduct" is satisfied if there is a willful course of conduct involving repeated contact that would cause a reasonable person to feel harassed. "Harassment" is defined as a knowing and willful course of conduct which seriously harasses. There is no way to tell these apart, so there is a risk that all of the people filing for antiharassment petitions are simply going to migrate over to stalking petitions. There will not be any better tools for law enforcement to know which cases are more serious.

There is another remedy available for stalking victims. It is unclear how someone who is willing to violate an antiharassment order will follow a stalking order. The problem is with law enforcement not taking this seriously.

**Persons Testifying:** (In support) Representative Goodman, prime sponsor; Chris Johnson and Tracy Bahm, Office of the Attorney General; Ken Paulson; Nancy Heisler; Cindy Paulson; David Martin, Washington Association of Prosecuting Attorneys; Alex Warhese, King County Prosecuting Attorney's Office; and Marta Lyall.

(Opposed) Kim Prochnau, Superior Court Judges Association; James McMhan, Washington Association of County Officials; and Erin Curtis, Washington Association of Defense Lawyers.

**Persons Signed In To Testify But Not Testifying:** None.