

HOUSE BILL REPORT

ESHB 1383

As Passed House:
March 11, 2013

Title: An act relating to protection orders for stalking and harassment.

Brief Description: Modifying stalking and harassment protection order provisions.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Goodman, Fey, Kirby, Orwall, O'Ban, Roberts, Jinkins, Hope, Angel, Smith, Dahlquist, Wilcox and Kristiansen).

Brief History:

Committee Activity:

Judiciary: 2/7/13, 2/12/13 [DPS].

Floor Activity:

Passed House: 3/11/13, 98-0.

Brief Summary of Engrossed Substitute Bill

- Creates a civil protection order available to victims of stalking conduct who do not qualify for a domestic violence protection order.
- Creates procedures for entry of a stalking no-contact order during the pendency of criminal prosecutions for stalking and related offenses.
- Requires the Administrative Office of the Courts to develop a master pattern form for all antiharassment and stalking protection order petitions.
- Expands the categories of behavior that qualify as felony stalking, and increases the penalties for felony stalking.
- Authorizes creation of protection order commissioners.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Goodman, Hope, Jinkins, Kirby, Klippert, Nealey, Orwall, Roberts and Shea.

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.

Staff: Omeara Harrington (786-7136).

Background:

Protection Orders and No-Contact Orders.

There are a number of civil protection orders a court may grant to restrict a person's ability to have contact with another person. 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. Antiharassment protection orders are available to those who have been seriously alarmed, annoyed, or harassed by conduct that serves no legitimate or lawful purpose. The petitioner does not need to establish that they have any sort of special relationship with the respondent.

A court may 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. 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.

Civil protection orders and criminal no-contact orders prohibit contact of any kind with the victim and forbid the respondent from being within a set distance of specific locations. They also commonly involve a surrender of firearms. In entering most orders, if the person to be restrained has used or threatened to use a firearm in the commission of a felony, or is otherwise disqualified from having a firearm, the court either may or must require the person to surrender their firearms and concealed pistol license, depending on the evidence presented.

Generally, violation of a protection order or no-contact order is a gross misdemeanor. A violation of some protection orders is a class C felony if the person violating the order has two prior convictions for violation of a similar order or if the violation involved an assault or reckless endangerment. Antiharassment protection order violations do not elevate to a class C felony.

Superior, district, and municipal courts all have original jurisdiction to issue most kinds of protection orders. Antiharassment orders place original jurisdiction with district courts, and allow municipal courts to exercise jurisdiction by local court rule. Regardless of the type of order, jurisdiction is limited to the superior court under some circumstances.

Stalking and Cyberstalking.

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. Cyberstalking occurs when a person makes certain electronic communications with the intent to harass, intimidate, torment, or embarrass another person. Stalking and cyberstalking are generally gross misdemeanors, but under some circumstances are class C felonies.

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

Summary of Engrossed Substitute Bill:

Stalking protection orders are created. These orders specifically apply to victims of stalking conduct who do not qualify for a protection order under the domestic violence statutes.

Stalking Protection Orders.

Filing a Petition. A 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 as defined in statute qualify as stalking conduct for purposes of seeking a stalking protection order. Stalking conduct may also be any course of conduct, with no lawful purpose, involving repeated or continuing contacts or any type of surveillance that results in reasonable feelings of intimidation or threat in the petitioner, and that the stalker knows or reasonably should know causes such feelings, even if that was not the stalker's intent.

Certain qualified people may file on behalf of a minor child or a vulnerable adult. A child who is under age 18, but at least age 16 may file without the assistance of a guardian or next friend, and no guardian ad litem need be appointed to a respondent who is 16 years or older. The petitioner cannot be required to pay for any fees associated with appointment of a guardian ad litem.

Jurisdiction and Venue. The petitioner must file in the county or municipality where the petitioner resides, or in the county or municipality to which the petitioner has relocated to avoid the stalking conduct. Jurisdiction over stalking protection orders is substantially the same as jurisdiction over antiharassment orders. The court may assert personal jurisdiction over a nonresident for purposes of a stalking protection order if the nonresident meets certain qualifying criteria making Washington jurisdiction appropriate.

Service of Process and Hearings. The court must hold a hearing within 14 days of receiving the petition. 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. The court may issue a temporary stalking order pending the full hearing. 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.

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.

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

Relief Granted in the Order. The court may order the following relief:

- Restrain the respondent from contacting the petitioner, or from conducting any form of surveillance of the petitioner or the petitioner's children.
- Exclude the respondent from the petitioner's home, workplace, or school, or the daycare, workplace, or school of the petitioner's children, or restrict the respondent from coming within a specified distance of a specified location.
- Require the respondent to transfer schools, if the petitioner and respondent attend the same school.
- Order any other injunctive relief as necessary or appropriate for the protection of the petitioner, which can include mental health or chemical dependency evaluation, or both.
- Require the respondent to pay court costs, service fees, and attorneys' fees.

If circumstances warrant, the court is either required or allowed to order the respondent to surrender his or her firearms for the duration of the order.

Ex Parte Temporary Orders. An ex parte temporary stalking protection order may be issued if it appears from the petition and any additional evidence that the respondent has engaged in stalking conduct and that irreparable injury could result if an immediate order is not issued without prior notice. An ex parte temporary stalking order is effective for a fixed period, not to exceed 14 days, or 24 days if service by publication or mail is permitted. A full hearing must be set for no later than the expiration date 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 or is permanent. Any 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. The court must renew the order unless the respondent proves by a preponderance of the evidence that they will not resume the stalking conduct in the order's absence.

Upon application with notice to all parties and after a hearing, the court may modify the terms of an existing stalking protection order. Motions brought by a respondent are subject to additional procedural requirements. The respondent may also be required to pay the petitioner's attorneys' fees.

A knowing violation of a temporary or final stalking protection order is 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 No-Contact Orders.

When a person charged with or arrested for stalking or a stalking-related offense is released from custody pending arraignment or trial, if there is no outstanding restraining or protection order, the court may issue a stalking no-contact order. At the time of arraignment or whenever a motion is brought to modify the conditions of release, electronic monitoring may be ordered in conjunction with the order. A stalking no-contact order may also be as a

condition of a criminal sentence, and remains in effect for a period of five years from the date of entry.

A stalking no-contact order 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.

Other Provisions.

The superior court of each county may appoint one or more attorneys to act as protection order commissioners, effective upon approval of the legislative authority in the affected county.

By January 1, 2014, the Administrative Office of the Courts is required to develop a single master petition pattern form for all antiharassment and stalking protection orders. The Washington Supreme Court Gender and Justice Commission must provide recommendations to the Legislature about possible remedies to the confusion over the type of protection order a petitioner should seek.

Changes are made to the felony stalking provisions and corresponding sentences. 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 that provide a basis for exceeding the standard sentencing range.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Washington has a weakness when it comes to stranger stalking. All that is currently available to victims of Stalking are antiharassment orders, which are not taken seriously. These cases are rarer and more extreme than harassment cases, and should be treated differently. Stalking deserves the same attention as domestic violence and sexual assault protection orders are given. A different order signals to law enforcement that they are dealing with a more serious case.

There was a lot of work that went into this, and the proposal is right this time. The criminal definition of stalking requires proof of intent, which is a problem for those who do not know their stalker, so there is a provision that allows a person to obtain an order without proving intent. There is also some trouble deciding what constitutes harassment and what constitutes stalking. These cases are going to be handled at the district court level, as antiharassment orders are. This bill provides a master form covering stalking and antiharassment orders and the judge decides which order is appropriate.

Stalking victims have had to spend years going to great lengths to avoid their stalkers. Some have to participate in the Address Confidentiality Program, where all mail is sent to a post office box so the stalker will not be able to find their victim's home. Others have been murdered. If there had been something greater than an antiharassment order, like a stalking protection order requiring GPS monitoring, those incidents may not have happened.

(Other) The change of venue is an improvement over previous versions of this proposal. There are additional technical changes that would be beneficial.

(Opposed) None.

Persons Testifying: (In support) Representative Goodman, prime sponsor; Dan Satterberg and David Martin, King County Prosecuting Attorneys; Tracy Lundeen; Ken Paulson; Richard Hicks; and Rick Bartholomew, Washington State Bar Association.

(Other) James McMahan, Washington Association of County Officials.

Persons Signed In To Testify But Not Testifying: None.