

# SENATE BILL REPORT

## SB 5452

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As Reported by Senate Committee On:  
Human Services & Corrections, February 20, 2013

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

**Brief Description:** Modifying stalking and harassment protection order provisions.

**Sponsors:** Senators Conway, Carrell, Darneille and Kohl-Welles.

**Brief History:**

**Committee Activity:** Human Services & Corrections: 2/05/13, 2/20/13 [DPS].

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** That Substitute Senate Bill No. 5452 be substituted therefor, and the substitute bill do pass.

Signed by Senators Carrell, Chair; Pearson, Vice Chair; Darneille, Ranking Member; Hargrove, Harper and Padden.

**Staff:** Shani Bauer (786-7468)

**Background:** There are several kinds of orders available to limit respondents' contact with victims. No-contact orders are commonly issued as part of criminal proceedings, and civil protection orders are available regardless of whether a criminal case is pending. Generally, violation of a protection order or no-contact order is a gross misdemeanor. If the restrained person has two prior convictions for violations or the violation involves reckless endangerment or assault, the violation is a class C felony.

Domestic Violence Protection Order. Civil 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. In addition to restraining further acts of domestic violence, the order can prohibit the perpetrator from contacting the victim or knowingly coming within a specified distance of a location. Additionally, no-contact orders can be issued in criminal cases involving domestic violence. 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.

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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.*

Civil Anti-Harassment Protection Orders. A person who is the victim of unlawful harassment may petition the court for a civil anti-harassment protection order against the alleged harasser, the respondent. Unlawful harassment means a willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person and that has no legitimate purpose. The course of conduct must be of a type that would cause a reasonable person to suffer substantial emotional distress and must actually cause the petitioner to suffer substantial emotional distress. A court may grant an ex parte temporary anti-harassment protection order and, after a full hearing, a long-term anti-harassment protection order. Both orders require the respondent to refrain from engaging in harassment and may include provisions prohibiting the respondent from contacting the petitioner or from going within a certain distance of the petitioner's home or workplace.

Stalking. A person commits the crime of stalking if they intentionally and repeatedly harass or repeatedly follow another person, which places the person in fear that the stalker intends to injure them, another person, or their property. The stalker must know or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker does not intend to place the person in fear, intimidate, or harass the person.

Cyberstalking A person is guilty of cyberstalking if the person makes an electronic communication with the intent to harass another person using obscene words or images, or suggesting the commission of an obscene act; anonymously or repeatedly whether or not conversation occurs; or threatening to inflict injury on the person or property of the person or any member of their family or household.

**Summary of Bill (Recommended Substitute):** A new action is created authorizing a petition for a stalking protection order. Any person who does not qualify for a domestic violence protection order may file for a stalking protection order if the person has been the victim of stalking conduct. Stalking conduct is defined as any act of stalking or cyberstalking as defined in the criminal code or any course of conduct involving repeated attempts to contact, monitor, track, or follow another that: (1) would cause a reasonable person to feel intimidated, frightened, or threatened and which actually causes that feeling; (2) serves no lawful purpose; and (3) the stalker knows or reasonably should know threatens, frightens, or intimidates the person, even if the stalker did not intend to intimidate, frighten, or threaten the person. A court may grant an ex parte temporary stalking protection order and, after a full hearing, a long-term stalking protection order. Both orders require the respondent to refrain from stalking the victim and may include provisions prohibiting the respondent from contacting the petitioner or from going within a certain distance of the petitioner's home or workplace.

The Administrative Office of the Courts must develop a single master petition pattern form for all anti-harassment and stalking protection orders to assist victims in filing for protection orders. The Supreme Court Gender and Justice Commission is respectfully requested to consider potential solutions to reduce confusion about which type of protection order a petitioner should seek.

Stalking is an aggravating circumstance that may be considered by a jury in order to support a sentence above the standard sentence range. A no-contact stalking order is defined. If a

defendant is charged with the crime of stalking and the court issues an order protecting the victim, the court must issue a no-contact stalking order.

A violation of a stalking protection or no-contact order is a gross misdemeanor. If the person has two previous convictions for violating an order, violation is a class C felony.

**EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Substitute):** In order to qualify as stalking conduct for the purposes of getting a protection order, the stalker must know or reasonably should know their behavior threatens, frightens, or intimidates the person, even if the stalker did not intend to cause that feeling. Provisions regarding how petitions may be filed for minors under the age of 18 are clarified. A definition is added for a no-contact stalking order and references are changed from protection order to no-contact order when the order is entered as part of a criminal proceeding. The Supreme Court Gender and Justice Commission is respectfully requested to consider potential solutions to reduce confusion about which type of protection order a petitioner should seek.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** PRO: This is the third anniversary of the tragic event when Jennifer Paulson was killed. This bill is to address this type of stalking behavior and prevent other victims. The bill does two important things. First, the definition does not include intent. A person's state of mind is hard to prove in these circumstances. Second, it includes the ability to require the stalker to be tracked by real-time GPS. If this had been required in Jennifer's case, she would still be alive. There have been many efforts over the past couple years to perfect this order. Research shows that protection orders work. An anti-harassment order does not fit this situation and is actually dangerous. The police, prosecutor, and judge need to know what is going on. A simple anti-harassment order does not convey the seriousness of the situation. Further, second and subsequent violations of the protection order will bump the criminal conduct up to a felony.

CON: Current provisions in the law for an anti-harassment order already provide a remedy for stalking behavior. We do not need a new protection order. A judge would order an anti-harassment order in all of the situations discussed today.

OTHER: The county clerks appreciate proponents working with them on the provisions of bill. A few more technical amendments are needed.

**Persons Testifying:** PRO: Senator Conway, prime sponsor; David Martin, King County Prosecuting Attorney; Nancy Slater, Ken Paulson, citizens.

CON: James McMahan, WA Assn. of County Officials.

OTHER: Larry Jefferson, WA Defender Assn., WA Assn. of Criminal Defense Lawyers.