

# HOUSE BILL REPORT

## HB 1696

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### As Amended by the Senate

**Title:** An act relating to stalking-related offenses.

**Brief Description:** Concerning stalking-related offenses.

**Sponsors:** Representatives Davis, Mosbrucker, Orwall, Griffey, Duerr, Reed, Leavitt, Barnard, Walen, Eslick, Ramel and Pollet.

### Brief History:

#### Committee Activity:

Community Safety, Justice, & Reentry: 2/6/23, 2/14/23 [DP].

#### Floor Activity:

Passed House: 2/27/23, 95-0.

Senate Amended.

Passed Senate: 3/31/23, 48-0.

### Brief Summary of Bill

- Modifies the scope of conduct that constitutes the crime of Stalking and certain conditions and exceptions related to Stalking.
- Repeals the provision related to the crime of Cyberstalking.

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### HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

**Majority Report:** Do pass. Signed by 9 members: Representatives Goodman, Chair; Simmons, Vice Chair; Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Davis, Farivar, Fosse, Graham and Ramos.

**Staff:** Corey Patton (786-7388).

### Background:

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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 part of the legislation nor does it constitute a statement of legislative intent.*

### Stalking.

A person commits the crime of Stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime, the person:

- intentionally and repeatedly harasses or follows a victim;
- the victim is placed in reasonable fear that the person intends to injure the victim, another person, or property; and
- the person either intends to frighten, intimidate, or harass the victim, or knows or reasonably should know that the victim is afraid, intimidated, or harassed.

Stalking is a gross misdemeanor except under the following circumstances, in which case it is elevated to a class B felony ranked at seriousness level V:

- the perpetrator has previously been convicted in any state of any crime of harassment of the same victim, members of the victim's family or household, or any person specifically named in a protective order;
- the stalking violates any protective order protecting the victim;
- the perpetrator has previously been convicted of a gross misdemeanor or felony stalking offense;
- the perpetrator was armed with a deadly weapon;
- the victim is or was in a specified role or occupation, and the perpetrator stalked the victim to retaliate for an act the victim performed during the course of the victim's official duties or to influence the victim's performance of official duties; or
- the victim is a current, former, or prospective witness in an adjudicative proceeding, and the perpetrator stalked the victim to retaliate against the victim as a result of the victim's testimony or potential testimony.

Attempts to contact or follow a person after being given actual notice that the person does not want to be contacted or followed constitute *prima facie* evidence of the perpetrator's intent to intimidate or harass. "Contact" includes, in addition to any other form of contact or communication, the sending of an electronic communication. It is a defense to Stalking that the defendant is a licensed private investigator acting within that capacity.

### Cyberstalking.

A person commits the crime of Cyberstalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime, the person knowingly and without consent installs or monitors an electronic tracking device with the intent to track the location of a victim or installs or causes an electronic tracking device to be installed, placed, or used with the intent to track the location of the victim, and:

- the person knows or reasonably should know that knowledge of the installation or monitoring of the tracking device would cause the victim reasonable fear;
- the person has notice that the victim does not want to be contacted or monitored; or
- the victim has a protective order in effect protecting the victim from the person.

Cyberstalking is a gross misdemeanor except under the following circumstances, in which case it is elevated to a class C felony without a specified seriousness level:

- the perpetrator has previously been convicted in any state of any crime of harassment of the same victim, members of the victim's family or household, or any person specifically named in a protective order;
- there is a protective order in effect protecting the victim from contact with the perpetrator;
- the perpetrator has previously been convicted of a gross misdemeanor or felony stalking or cyberstalking offense;
- the victim is or was in a specified role or occupation, and the perpetrator stalked the victim to retaliate for an act the victim performed during the course of the victim's official duties or to influence the victim's performance of official duties; or
- the victim is a current, former, or prospective witness in an adjudicative proceeding, and the perpetrator stalked the victim to retaliate against the victim as a result of the victim's testimony or potential testimony.

Cyberstalking does not include the installation, placement, or use of an electronic tracking device by an order of a state or federal court, or by any of the following:

- a law enforcement officer, judicial officer, probation or parole officer, or other public employee when engaged in the lawful performance of official duties;
- a legal guardian designated to provide protective services to a disabled adult when used to track the location of the disabled adult;
- a parent or legal guardian of a minor when used to track the location of that minor, unless the parent or guardian is subject to a court order that prohibits them from assaulting, threatening, harassing, following, or contacting the minor;
- an employer, school, or other organization that owns the device on which the tracking device is installed and provides the device to a person for use in connection with the person's involvement with the employer, school, or organization, and the use of the tracking device is limited to recovering lost or stolen items; or
- an owner of fleet vehicles, when tracking such vehicles.

An "electronic tracking device" is an electronic device that permits a person to remotely determine or monitor the position and movement of another person, vehicle, device, or other personal possession. "Electronic device" includes computer code or other digital instructions that, once installed on a device, allow a person to remotely track the position of that device.

Classification of Crimes.

Crimes are classified as misdemeanors, gross misdemeanors, or class A, B, or C felonies. While there are exceptions, the classification of a crime generally determines the maximum term of confinement and fine for an offense. For each classification, the maximum terms of confinement and maximum fines are as follows:

<b>Classification</b>	<b>Maximum Confinement</b>	<b>Maximum Fine</b>
Misdemeanor	90 days	\$1,000

Gross Misdemeanor	364 days	\$5,000
Class C Felony	5 years	\$10,000
Class B Felony	10 years	\$20,000
Class A Felony	Life	\$50,000

For most felony offenses, the Sentencing Reform Act determines a specific sentence range within the statutory maximum according to a sentencing grid. The sentencing grid provides a standard range of months for the sentence, based on both the severity, or "seriousness level," of the offense and the convicted person's "offender score," which is based on the person's criminal history.

**Summary of Bill:**

The scope of conduct that constitutes the crime of Stalking and certain conditions and exceptions related to Stalking are modified.

A person commits the crime of Stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:

- the person either: (1) intentionally and repeatedly harasses or follows a victim; or (2) knowingly and without consent installs or monitors an electronic tracking device, or causes an electronic tracking device to be installed, placed, or used, with the intent to track the location of the victim;
- the victim suffers substantial emotional distress or is placed in fear that the person intends to injure the victim, another person, or property, or if the person's conduct involves the use of a tracking device, the victim's knowledge of the tracking device would reasonably elicit such emotional distress or fear; and
- the person either: (1) intends to frighten, intimidate, harass, or inflict emotional distress upon the victim; (2) knows or reasonably should know that the victim is afraid, intimidated, harassed, or placed in emotional distress, or if the person's conduct involves the use of a tracking device, knows or reasonably should know that the victim's knowledge of the tracking device would elicit such reaction: or (3) attempts to or does contact, follow, track, or monitor the victim after being given actual notice that the victim does not want to be contacted, followed, tracked, or monitored.

"Actual notice" includes, in addition to any other form of actual notice, circumstances in which the victim has a protective order in effect protecting the victim from the person. The lack of intent to frighten, intimidate, or harass the victim or place the victim in emotional distress and the lack of actual notice from the victim do not constitute defenses to Stalking.

Stalking does not include the installation, placement, or use of an electronic tracking device by an order of a state or federal court, or by any of the following:

- a law enforcement officer, judicial officer, probation or parole officer, or other public

- employee when engaged in the lawful performance of official duties;
- a legal guardian designated to provide protective services to a disabled adult when used to track the location of the disabled adult;
- a parent or legal guardian of a minor when used to track the location of that minor, unless the parent or guardian is subject to a court order that prohibits them from assaulting, threatening, harassing, following, or contacting the minor;
- an employer, school, or other organization that owns the device on which the tracking device is installed and provides the device to a person for use in connection with the person's involvement with the employer, school, or organization, and the use of the tracking device is limited to recovering lost or stolen items; or
- an owner of fleet vehicles, when tracking such vehicles.

The provision related to the crime of Cyberstalking is repealed.

### **EFFECT OF SENATE AMENDMENT(S):**

The amended bill: (1) modifies the definition of Stalking to include circumstances amounting to a felony attempt of another crime, and circumstances when the perpetrator intentionally contacts, follows, tracks, or monitors, or attempts to contact, follow, track, or monitor another person after being given actual notice that the person does not want to be contacted, followed, tracked, or monitored; (2) eliminates the element of Stalking restricting the offense to situations where the perpetrator either intends to frighten, intimidate, harass or inflict emotional distress upon the victim, knows that the victim is afraid, intimidated, harassed, or placed in emotional distress, or has actual notice that the victim does not want to be contacted, followed, tracked, or monitored; (3) provides that a lack of actual notice that the victim did not want to be contacted, followed, tracked, or monitored does not constitute a defense to Stalking, regardless of the way in which the perpetrator committed the Stalking offense; (4) provides that Stalking is a Class B felony if the perpetrator has previously been convicted in this state or any other state of any crime of harassment, regardless of who the previous victim was; (5) replaces references to "emotional distress" with "substantial emotional distress," and defines "substantial emotional distress" as a mental, emotional, or physical reaction such as anxiety, apprehension, or loss of ability to concentrate or other symptoms, whether or not medical or other professional treatment or counseling is sought or required, which degrades the victim's quality of life; and (6) modifies the definition of "harasses" to include a knowing and willful course of conduct directed at a specific person which seriously torments, rather than harasses, such person, and which serves no legitimate or lawful purpose.

**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) There is a tendency to picture stalking as being perpetrated by a stranger, but the most pervasive and dangerous form of stalking is done by an intimate partner. Stalking behavior commonly begins or intensifies when someone tries to leave a relationship, and perpetrators are overwhelmingly male. The terror generated by stalking is uniquely associated with high levels of fear, lengthy periods of fear, and significant mental health impacts. Stalking is also unique from other crimes because it involves a course of conduct that happens repeatedly, rather than a single incident. Stalking can happen late at night, or in the middle of the day during a work meeting. No place is safe or out of reach. This leads to an incredible feeling of hopelessness and helplessness. Physical and technological stalking are equally predictive of future violent actions, including increased rates of homicide.

Scholarly literature indicates that law enforcement may downplay the effects of stalking, and the current statutory framework requires prosecutors to feel confident in their ability to prove all elements of the crime. Most stalkers do not make overt threats of physical violence. Instead, they tailor their tactics to specifically target their victims. Current laws do not account for this degree of nuance, which makes it difficult to prove that a victim's fear is reasonable. This bill expands the conduct that constitutes stalking, specifically by including conduct that causes either emotional distress or fear of harm. Bolstering and clarifying these laws will help stop harassment and violence.

(Opposed) None.

**Persons Testifying:** Representative Lauren Davis, prime sponsor; Emily Stone, Washington State Coalition Against Domestic Violence; and Taffy Hunter, Spokane Regional Domestic Violence Coalition.

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