

SENATE BILL REPORT

HB 1696

As Reported by Senate Committee On:
Law & Justice, March 22, 2023

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

Committee Activity: Law & Justice: 3/14/23, 3/22/23 [DPA].

Brief Summary of Amended Bill

- Modifies the scope of conduct that constitutes the crime of stalking.
- Modifies certain conditions and exceptions related to stalking.
- Repeals the statute related to the crime of cyberstalking.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Padden, Ranking Member; Kuderer, McCune, Pedersen, Salomon, Torres, Valdez, Wagoner and Wilson, L..

Staff: Joe McKittrick (786-7287)

Background: 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; and
- the person either intends to frighten, intimidate, or harass the victim, or knows or

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reasonably should know that the victim is afraid, intimidated, or harassed.

Stalking is a gross misdemeanor, punishable by up to 365 days in jail, a \$5,000 fine, or both. Stalking is a class C felony, punishable by up to five years in prison, a \$10,000 fine, or both, under the following circumstances:

- the stalker 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 stalker has previously been convicted of stalking;
- the stalker was armed with a deadly weapon;
- the victim is or was employed in specified occupations, and the stalker stalked the person in retaliation for an act the victim performed during the course of 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 stalker stalked the person in retaliation against the victim as a result of the victim's testimony or potential testimony.

Any attempt to contact or follow a person after being given actual notice that the person does not want to be contacted or followed constitutes prima facie evidence of the perpetrator's intent to intimidate or harass.

A person commits the crime of cyberstalking if, without lawful authority, and under circumstances not amounting to attempt a felony 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 generally a gross misdemeanor. The crime is elevated to a class C felony under the same circumstances that elevate the crime of stalking to a class C felony.

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 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, if the device is used to track the location of the disabled adult;
- a parent or legal guardian of a minor when used to track the location of the minor, unless the parent or legal 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 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.

Electronic tracking device means 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, allow a person to remotely track the position of that device.

Summary of Amended Bill: The scope of conduct that constitutes the crime of stalking as well as certain conditions and exceptions related to stalking are modified.

A person commits the crime of stalking if, without lawful authority, the person either intentionally and repeatedly harasses or follows a victim or 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, and:

- the victim suffers substantial emotional distress or fears 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;
- the stalker intends to frighten, intimidate, harass, or inflict substantial emotional distress upon the victim;
- the stalker knows or reasonably should know that the victim is afraid, intimidated, harassed, or placed in substantial emotional distress, or if the stalker'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 a reaction; or
- the stalker 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.

Substantial emotional distress means a mental, emotional, or physical reaction such as anxiety, apprehension, or loss of ability to concentrate or other symptoms, whether medical or other professional treatment or counseling is sought or required, which degrades the victim's quality of life.

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 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, if the device is used to track the location of the disabled adult;
- a parent or legal guardian of a minor when used to track the location of the minor,

- unless the parent or legal 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 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 statute related to the crime of cyberstalking is repealed.

EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S):

- Removes the provision stating that a person's acts do not constitute the crime of stalking if the acts amount to a felony attempt of another crime.
- Amends the term emotional distress to substantial emotional distress throughout the bill.
- Defines the term substantial emotional distress.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The most common form of stalking is by a current or former intimate partner. This is also the most dangerous form of stalking. Staking is predictive of violent behavior. Under current law, it is incredibly difficult to convict someone of stalking. This bill would bring Washington law in line with federal law and the laws of most other states by providing two ways to prove the stalkers impact on the victim. There has been a consistent increase in stalking, however, it is difficult to prosecute because of the statutory elements of the crime. The use of technology has made this even worse. This bill will help ensure the safety of victims of stalking. Stalking is a pervasive tactic used by domestic violence perpetrators. The most dangerous point in a domestic violence situation is when the victim makes the decision to leave the relationship. This is also the point where stalking behavior either begins or intensifies. Stalking increases the risk of homicides in domestic violence situations and increases the trauma suffered by victims and survivors. This bill will help prevent future trauma.

Persons Testifying: PRO: Representative Lauren Davis, Prime Sponsor; Coreen Schnepf, Pierce County Prosecutor's Office; Darrell Lowe, Redmond Police Department; Taffy Hunter, Spokane Regional Domestic Violence Cneter; Carey Morris, Washington State

Coalition Against Domestic Violence.

Persons Signed In To Testify But Not Testifying: No one.