

HOUSE BILL REPORT

ESHB 2771

As Passed Legislature

Title: An act relating to the prevention of cyberstalking.

Brief Description: Prohibiting cyberstalking.

Sponsors: By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Sommers, Lantz, Cody, Nixon, Morrell, Hankins, Tom, Kirby, Delvin, Mielke, Pearson, McMahan, Moeller, Dickerson, McIntire, Kenney, Kessler, Conway, Darneille, Sullivan, Schual-Berke, Kagi and Ormsby).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 1/28/04 [DPS].

Floor Activity:

Passed House: 2/13/04, 97-0.

Passed Senate: 3/2/04, 47-0.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Establishes the crime of cyberstalking.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Mielke, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kagi, Pearson and Veloria.

Staff: Jim Morishima (786-7191).

Background:

I. Criminal Harassment

A person commits the crime of harassment if he or she:

- Without lawful authority knowingly threatens to: (a) cause bodily injury immediately or in the future to the person threatened or to any other person; (b) cause physical

- damage to the property of a person other than the actor; (c) subject the person threatened or any other person to physical confinement or restraint; or (d) maliciously do any other act that is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and
- The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. "Words or conduct" includes the sending of an electronic communication.

Criminal harassment is generally a gross misdemeanor. However, the crime is a class C felony with a seriousness level of III if:

- The offender has a previous conviction for any of several listed crimes, including telephone harassment and stalking, against the same victim, members of the victim's family, or persons named in a no-contact or no-harassment order; or
- The offender committed the crime by threatening to kill another person.

The portion of the crime of harassment relating to threatening to do an act that is intended to substantially harm the person threatened or another with respect to his or her mental health was held unconstitutionally vague and overbroad by the Washington Supreme Court. State v. Williams, 144 Wn.2d 197 (2001).

II. Stalking

A person is guilty of stalking if he or she, without lawful authority and under circumstances not amounting to a felony attempt of another crime:

- Intentionally or repeatedly harasses or repeatedly follows another person (note that the definition of "harassment" in the stalking statute is the broader definition used in the context of civil anti-harassment protection orders, not the definition of "harassment" for purposes of criminal harassment);
- The person being harassed or followed is placed in reasonable fear that the stalker intends to injure the person, another person, or the property of the person or of another; and
- The stalker either: (a) intends to frighten, intimidate, or harass the person or (b) knows, or reasonably should know, that the person is afraid, intimidated, or harassed.

Stalking is generally a gross misdemeanor. However, the crime is a class C felony with a seriousness level of V if:

- The offender has a previous conviction for any of several listed crimes, including telephone harassment and harassment against the same victim, members of the victim's family, or persons named in a no-contact or no-harassment order;
- The stalking violates any protective order of the person being stalked;
- The offender has a previous conviction for stalking;
- The offender was armed with a deadly weapon while committing the crime;
- The victim is or was a law enforcement officer, judge, juror, attorney, victim advocate, legislator, or community corrections officer, and the stalking was in retaliation for something done in the victim's official capacity or to influence the

- victim's actions in his or her official capacity; or
- The victim is a current, former, or prospective witness in an adjudicative proceeding and the offender stalked the victim as a result of the victim's testimony or potential testimony.

III. Telephone Harassment

A person is guilty of telephone harassment if he or she, with intent to harass, intimidate, torment, or embarrass any other person, makes a telephone call to the other person:

- Using lewd, lascivious, profane, indecent, or obscene words or language, or suggesting the commission of any lewd or lascivious act;
- Anonymously, repeatedly, or at an extremely inconvenient hour, whether or not conversation occurs; or
- Threatening to inflict injury on the person or property of the person called or any member of his or her family or household.

Telephone harassment is generally a gross misdemeanor. However, the crime is a class C felony with a seriousness level of III if:

- The offender has a previous conviction for any of several listed crimes, including stalking and harassment, against the same victim, members of the victim's family, or persons named in a no-contact or no-harassment order; or
- The offender committed the crime by threatening to kill another person.

Although the constitutionality of the state telephone harassment statute has never been addressed by the Washington Supreme Court, provisions in a Bellevue telephone harassment ordinance prohibiting "profane" words or language were held unconstitutionally overbroad by the court. City of Bellevue v. Lorang, 140 Wn.2d 19 (2000).

Summary of Engrossed Substitute Bill:

A person is guilty of cyberstalking if he or she, with intent to harass, intimidate, torment, or embarrass any other person, and under circumstances not constituting telephone harassment, makes an electronic communication to the other person or a third party via the internet or electronic mail:

- Using lewd, lascivious, indecent, or obscene words, images, or language, or suggesting the commission of any lewd or lascivious act;
- Anonymously or repeatedly whether or not conversation occurs; or
- Threatening to inflict injury on the person or property of the person contacted or any member of his or her family or household.

"Electronic Communication" is defined as the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. The term includes electronic mail, internet based communications, pager service, and electronic text messaging.

Cyberstalking is generally a gross misdemeanor. However, the crime is a class C felony with a seriousness level of III if:

- The offender has a previous conviction for any of several listed crimes, including stalking, harassment, and telephone harassment, against the same victim, members of the victim's family, or persons named in a no-contact or no-harassment order; or
- The offender committed the crime by threatening to kill another person.

Cyberstalking is added to the list of crimes, a previous conviction for which causes harassment, stalking, telephone harassment, and cyberstalking to be elevated to a class C felony.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately, except for section 3, which, because of amendments made in a previous legislative session, takes effect July 1, 2004.

Testimony For: Predators often use technology to terrorize their victims. The cycle of harassment can begin for any reason and can last for any length of time. Cyberstalking makes the victim feel terrorized and alone. Anonymity and randomness are the tools of the cyberstalker. Cyberstalking can occur both in the workplace and in the home. It is difficult to stop a cyberstalker because their behavior is often not covered under current criminal law. Cyberstalking can make a victim feel fearful, powerless, frustrated, enraged, and isolated. Cyberstalking is an expression of an old crime: violence against women. A message must be sent to cyberstalkers that society will not tolerate their behavior. They must know that they will be caught, prosecuted, and punished.

Testimony Against: None.

Persons Testifying: Joelle Ligon; and Suzanne Brown-McBride, Washington Coalition of Sexual Assault Programs.

Persons Signed In To Testify But Not Testifying: None.