

HOUSE BILL REPORT

HB 1626

As Reported by House Committee On:
Judiciary

Title: An act relating to harassment.

Brief Description: Modifying harassment provisions.

Sponsors: Representatives Goodman and Rodne.

Brief History:

Committee Activity:

Judiciary: 2/7/11, 2/10/11 [DPS].

Brief Summary of Substitute Bill

- Provides district courts with original jurisdiction over proceedings related to anti-harassment protection orders.
- Prohibits the courts from restricting a respondent to an anti-harassment protection order from exercising his or her constitutionally protected free speech rights, caring for his or her minor children, and enjoying his or her real property.

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; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Chandler, Eddy, Frockt, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

Staff: Kelly Pfundheller (786-7289).

Background:

A victim of unlawful harassment (the petitioner) may obtain a civil anti-harassment protection order if the petitioner fears violence or suffers substantial emotional distress from an unrelated person (the respondent) because the petitioner has been seriously alarmed, annoyed, or harassed by the respondent through conduct that serves no legitimate or lawful

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.

purpose. Anti-harassment protection orders are separate and distinct from domestic violence protection orders, restraining orders, and no-contact orders.

There are three types of trial courts in Washington: superior courts, district courts, and municipal courts. Each has differing levels of jurisdiction over the subject matter areas. District courts have jurisdiction to grant anti-harassment protection orders and municipal courts may opt to exercise jurisdiction by adopting procedures through local court rules. Superior courts have concurrent jurisdiction when a case is transferred from a district court or municipal court. A transfer to superior court is required when the respondent is under 18 years of age. In addition, a district court or municipal court may transfer an action for an anti-harassment protection order to a superior court when a judge makes findings of fact and conclusions of law showing that meritorious reasons exist for the transfer.

A petitioner may request that a district court grant an anti-harassment protection order against a respondent. If the court finds by a preponderance of the evidence that unlawful harassment exists, it must grant an order to the petitioner that prohibits the respondent from engaging in the harassment. A knowing violation of an anti-harassment protection order is a gross misdemeanor.

Summary of Substitute Bill:

District courts have original jurisdiction to grant civil anti-harassment protection orders and municipal courts may opt to exercise jurisdiction by adopting procedures through local court rules. The district court or municipal court must transfer proceedings to the superior court if:

- the respondent to the petition is under 18 years of age;
- the action involves title or possession of real property;
- a superior court has exercised or is exercising jurisdiction over a proceeding involving the parties; or
- the action would have the effect of interfering with a respondent's care, control, or custody of the respondent's minor child.

Prior to granting an ex parte temporary anti-harassment protection order or a civil anti-harassment protection order, the court may consult the judicial information system for records regarding criminal histories and other current proceedings involving the parties.

In granting an ex parte temporary anti-harassment protection order or a civil anti-harassment protection order, the court cannot restrict the respondent's:

- constitutionally protected free speech rights;
- use or enjoyment of his or her real property unless the order is related to dissolution proceedings or a separate action involving the title or possession of real property; and
- right to care, control, or custody of his or her minor child, unless the order is related to dissolution proceedings, non-parental actions for child custody, or proceedings under the Uniform Parentage Act or the Family Reconciliation Act.

Substitute Bill Compared to Original Bill:

The amendatory language regarding district court jurisdiction is changed from "exclusive original jurisdiction" to "original jurisdiction."

The term "code of conduct" in relation to unlawful harassment is amended to not include constitutionally protected free speech. The court is prohibited from restricting the respondent's constitutionally protected free speech (rather than prohibited from restricting the respondent's communications with third parties).

The substitute bill does not contain a section repealing the current statute that grants filing fee exemptions for certain petitioners seeking a civil anti-harassment protection order.

Appropriation: None.

Fiscal Note: Requested on February 3, 2011.

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

Staff Summary of Public Testimony:

(In support) This legislation addresses the concerns raised by the Superior Court Judges Association. The bill will promote judicial efficiency by providing the district courts with exclusive original jurisdiction over civil anti-harassment protection orders. In effect, the change in jurisdiction will reduce the caseload of the superior courts.

Civil anti-harassment protection orders are often used by parties to circumvent or negatively affect other proceedings. The changes to jurisdiction will prevent this from happening by requiring orders relating to other pending proceedings to be heard by the same court. The bill also prevents abuse by persons seeking to hinder a person's free speech rights, real property rights, or parental rights.

(In support with concerns) While the intent of the bill is praiseworthy, the provisions that relate to respondents' communications with third parties might create a possible loophole for stalkers. Sometimes stalkers will communicate through third parties as a means to harass their victim. Until the Legislature creates a protection order specifically for victims of stalking, these types of changes should not be made. Sometimes it is appropriate to place restrictions on a respondent's communications with third parties.

The bill should be amended to remove the section that repeals fee exemptions for victims of stalking, sexual assault, and domestic violence. This law is required in order to receive federal funding through the Violence Against Women Act.

(Opposed) None.

Persons Testifying: (In support) Representative Goodman, prime sponsor; and Laura Inveen, Superior Court Judges Association.

(In support with concerns) Grace Huang, Washington State Coalition Against Domestic Violence; and Chris Johnson, Office of the Attorney General.

Persons Signed In To Testify But Not Testifying: None.