

# HOUSE BILL REPORT

## SSB 5579

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**As Reported by House Committee On:**  
Judiciary

**Title:** An act relating to harassment.

**Brief Description:** Modifying harassment provisions.

**Sponsors:** Senate Committee on Judiciary (originally sponsored by Senators Kline and Pflug).

**Brief History:**

**Committee Activity:**

Judiciary: 3/10/11, 3/17/11 [DPA].

**Brief Summary of Substitute Bill  
(As Amended by House)**

- Provides district courts with original jurisdiction over proceedings related to antiharassment protection orders.
- Prohibits the courts from restricting a respondent to an antiharassment 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.
- Provides that violating a harassment no-contact order issued under a local ordinance is a misdemeanor under state law.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended. Signed by 12 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Chandler, Eddy, Frockt, Kirby, Klippert, Nealey, Orwall and Roberts.

**Staff:** Kelly Pfundheller (786-7289).

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

There are several types of orders a court may grant that restrict a person from harassing another person. Although there is potential overlap, the orders generally differ in who they apply to and in what context. For example, civil antiharassment protection orders are civil orders and may be obtained by a person who is the victim of ongoing conduct that is considered seriously annoying, alarming, or harassing. Harassment no-contact orders are available in criminal proceedings and may be imposed as a condition of release or sentence.

#### Civil Antiharassment Protection Orders.

A victim of unlawful harassment (the petitioner) may obtain a civil antiharassment protection order if the petitioner fears violence or suffers substantial emotional distress from an unrelated person (the respondent). Civil antiharassment protection orders are separate and distinct from harassment no-contact orders because they are not associated with criminal charges.

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 antiharassment 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 antiharassment 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.

The petitioner may request that a district court grant an antiharassment protection order against the 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 antiharassment protection order is a gross misdemeanor.

#### Harassment No-Contact Orders Relating to Criminal Charges.

When a defendant charged with a crime involving harassment is released from custody before trial, the court authorizing the release may issue a no-contact order that restricts the defendant from contacting the victim and other witnesses in the case. If the defendant is found guilty, the court may issue a no-contact order as a condition of the sentence. An intentional violation of a no-contact order issued under state law is a misdemeanor.

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### **Summary of Amended Bill:**

#### Civil Antiharassment Protection Orders.

District courts have original jurisdiction to grant civil antiharassment 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 antiharassment protection order or a civil antiharassment 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 antiharassment 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, nonparental actions for child custody, or proceedings under the Uniform Parentage Act or the Family Reconciliation Act.

#### Harassment No-Contact Orders Relating to Criminal Charges.

A violation of a harassment no-contact order issued under an equivalent local ordinance is considered a misdemeanor under state law.

#### **Amended Bill Compared to Substitute Bill:**

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

The term "course of conduct" in relation to unlawful harassment is amended to exclude 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 amended bill does not contain a section repealing the current statute that grants filing fee exemptions for certain petitioners seeking a civil antiharassment protection order.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended 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 was proposed by members of the superior courts, and it addresses concerns raised as a result of civil antiharassment protection order proceedings. The repeal of the fee waiver was suggested by members of the King County Superior Court, but the courts would still be able to waive the fee on their own accord.

The changes in the companion bill, House Bill 1626, relating to a respondent's communications with third parties and the fee waiver should also be made to the bill.

(With concerns) The bill should be amended to resemble the companion bill, House Bill 1626. Prohibiting a court from restricting a respondent's communications with third parties might create a loophole where a respondent could stalk a victim through other persons. Also, repealing the fee waiver for victims would jeopardize the state from receiving federal grants through the Violence Against Women Act.

(Opposed) None.

**Persons Testifying:** (In support) Senator Kline, prime sponsor; and Tom Parker, Superior Court Judges Association.

(With concerns) Grace Huang, Washington State Coalition Against Domestic Violence.

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