

# SENATE BILL REPORT

## SSB 5579

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As Amended by House, April 6, 2011

**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: 2/11/11, 2/16/11 [DPS].

Passed Senate: 3/01/11, 48-0.

Passed House: 4/06/11, 96-0.

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 5579 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Harper, Vice Chair; Pflug, Ranking Minority Member; Baxter, Carrell, Hargrove, Kohl-Welles, Regala and Roach.

**Staff:** Juliana Roe (786-7438)

**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 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.

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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.*

The petitioner may request that a district court grant an anti-harassment 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 anti-harassment protection order is a gross misdemeanor.

The filing fee and service of process costs are waived if the petitioner is seeking an anti-harassment protection order to obtain relief from (1) a person who has stalked him or her; (2) a person who has engaged in conduct that would constitute a sex offense; or (3) a family or household member who has engaged in conduct that constitutes domestic violence.

**Summary of Substitute Bill:** District courts have exclusive 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 (1) the respondent to the petition is under 18 years of age; (2) the action involves title or possession of real property; (3) a superior court has exercised or is exercising jurisdiction over a proceeding involving the parties; or (4) 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, the court cannot restrict the respondent's (1) communication with third parties other than the petitioner or petitioner's minor child unless the respondent's prior communications with third parties contained threats to the physical safety of the petitioner or petitioner's family; (2) 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 (3) 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.

An intentional violation of a court order by a defendant charged with a crime involving harassment under RCW 9A.46.040, or the equivalent local ordinance, is a misdemeanor.

A willful violation of a court order by a defendant found guilty of the crime of harassment issued under RCW 9A.46.080, or the equivalent local ordinance, is a misdemeanor.

The act eliminates the fee waiver currently available to certain petitioners.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: We have worked hard to narrow the definition of harassment in this bill because it has gotten too broad. We want to eliminate what we call the chicken cases. By moving these cases to district court we will be saving a great amount of money partially because these total approximately two-thirds of the cases that come before us in superior court. Superior courts are much more expensive to run than a district court. District courts are designed to move cases through more economically. There will be a savings as a result of making the change of original jurisdiction to district court. Even though this bill removes the fee waiver, it does not take away a judge's inherent right to waive a fee.

OTHER: We are opposed to the language that narrows communication relating to threats. This may not stop persons who cyber-stalk or stalk, but don't make explicit threats to the person. We are opposed to repealing the waiver fee. Right now, in order for the state to receive federal stop funds from the federal government the state has to certify that it does not charge fees involving certain kinds of protection orders. That is why the waiver was originally included in statute. If it is removed, the money may be taken away. Last, we are opposed to the language that says a court cannot prohibit a respondent from contacting third parties. Our concern is that abusers can use friends to stalk or harass the petitioner. We don't want the courts to have their hands tied.

**Persons Testifying:** PRO: Judge Steve Warning, Superior Court Judges Association.

OTHER: Grace Huang, Washington State Coalition Against Domestic Violence.

**House Amendment(s):** 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 does not include constitutionally protected free speech (rather than communication with third parties).

The court is prohibited from restricting the respondent's constitutionally protected free speech.

The section repealing the current statute that grants filing fee exemptions for certain petitioners seeking a civil anti-harassment protection order is removed.