
Judiciary Committee

HB 1383

Title: An act relating to protection orders for stalking and harassment.

Brief Description: Modifying stalking and harassment protection order provisions.

Sponsors: Representatives Goodman, Fey, Kirby, Orwall, O'Ban, Roberts, Jinkins, Hope, Angel, Smith, Dahlquist, Wilcox and Kristiansen.

Brief Summary of Bill

- Creates a civil protection order available to victims of stalking conduct who do not qualify for a domestic violence protection order.
- Creates procedures for entry of a stalking protection order during the pendency of criminal prosecutions for stalking and related offenses.
- Expands the categories of behavior that qualify as felony stalking, and increases the penalties for felony stalking.
- Authorizes creation of protection order commissioners.

Hearing Date: 2/7/13

Staff: Omeara Harrington (786-7136).

Background:

Protection Orders and No-Contact Orders.

There are a number of civil protection orders a court may grant to restrict a person's ability to have contact with another person. A court may grant an ex parte temporary protection order and, upon a full hearing, a final order that lasts for a fixed term or, in some cases, is permanent.

- Domestic violence protection orders are available to those who have suffered physical harm, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking by a family or household member.

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.

- Antiharassment protection orders are available to those who have been seriously alarmed, annoyed, or harassed by conduct that serves no legitimate or lawful purpose. The petitioner does not need to establish that they have any sort of special relationship with the respondent.
- Sexual assault protection orders are available to victims of nonconsensual sexual conduct or penetration that gives rise to a reasonable fear of future dangerous acts. These orders provide a remedy for victims of sexual assault who do not qualify for a domestic violence protection order.
- Vulnerable adult protection orders protect adults with mental or physical disabilities who are victimized through abandonment, abuse, financial exploitation, or the threat thereof.

Additionally, courts may issue no-contact orders to protect victims during the pendency of criminal proceedings, and these orders may also be imposed or extended as a condition of release or sentence.

Civil protection orders and criminal no-contact orders prohibit contact of any kind with the victim and forbid the respondent from being within a set distance of specific locations. They also commonly involve a surrender of firearms. In entering most orders, if the person to be restrained has used or threatened to use a firearm in the commission of a felony, or is otherwise disqualified from having a firearm, the court either may or must require the person to surrender their firearms and concealed pistol license, depending on the amount of evidence presented.

Generally, violation of a protection order or no-contact order is a gross misdemeanor. A violation of some protection orders is a class C felony if the person violating the order has two prior convictions for violation of a similar order or if the violation involved an assault or reckless endangerment. Antiharassment protection order violations do not elevate to a class C felony.

Superior, district, and municipal courts all have original jurisdiction to issue most kinds of protection orders. Antiharassment orders place original jurisdiction with district courts, and allow municipal courts to exercise jurisdiction by local court rule. Regardless of the type of order, jurisdiction is limited to the superior court under some circumstances.

Stalking and Cyberstalking.

Stalking, as defined in statute, is intentionally and repeatedly harassing or repeatedly following another person, placing that person in fear that the stalker intends to injure them, another person, or their or someone else's property. The fear must be reasonable under the circumstances, and the stalker either must intend to frighten, intimidate, or harass the person, or must know or reasonably should know that their conduct would elicit such a reaction. Cyberstalking occurs when a person makes certain electronic communications with the intent to harass, intimidate, torment, or embarrass another person. Stalking and cyberstalking are generally gross misdemeanors, but under some circumstances are class C felonies.

Victims of stalking and cyberstalking may pursue an antiharassment protection order. Some victims also have grounds to petition for a domestic violence protection order, but only if they have a family or dating relationship with the respondent.

Summary of Bill:

Stalking protection orders are created. These orders specifically apply to victims of stalking conduct who do not qualify for a protection order under the domestic violence statutes.

Stalking Protection Orders.

Filing a Petition. A petition for a stalking protection order must allege the existence of stalking conduct and be accompanied by an affidavit made under oath stating the specific reasons that the petitioner is in fear. Both stalking and cyberstalking as defined in statute qualify as "stalking conduct" for purposes of seeking a stalking protection order. Stalking conduct may also be any course of conduct with no lawful purpose, involving repeated or continuing contacts, or any type of surveillance, which results in reasonable feelings of intimidation or threat in the petitioner.

Certain qualified people may file on behalf of a minor child or a vulnerable adult. A child who is under age 18, but at least age 16 may file without the assistance or next friend, and no guardian ad litem need be appointed to a respondent who is 16 years or older. The petitioner cannot be required to pay for any fees associated with appointment of a guardian ad litem.

Jurisdiction and Venue. The petitioner must file in the county or municipality where the petitioner resides, or in the county or municipality to which the petitioner has relocated to avoid the stalking conduct. Jurisdiction over stalking protection orders is substantially the same as jurisdiction over antiharassment orders. The court may assert personal jurisdiction over a nonresident for purposes of a stalking protection order if the nonresident meets certain qualifying criteria making Washington jurisdiction appropriate.

Service of Process and Hearings. Upon receipt of the petition, the court must hold a hearing within 14 days. The respondent must be personally served no less than five court days prior to the hearing, and, if timely service is not made, the court will set a new hearing date to accommodate further service attempts. The court may issue a temporary stalking order pending the full hearing. The hearing may be held by telephone pursuant to court rule, to accommodate a disability, or to protect the petitioner from further stalking. Victim advocates may accompany and assist petitioners unless the court directs otherwise. Such assistance does not constitute the unlawful practice of law.

The standard of proof for entry of a stalking protection order is proof by a preponderance of the evidence that the petitioner has been a victim of stalking conduct by the respondent.

No fee may be charged for filing or service of process, and certified copies will be provided to the petitioner at no charge.

Relief Granted in the Order. The court may order the following relief:

- Restrain the respondent from contacting the petitioner, physically or nonphysically, directly or indirectly.
- Exclude the respondent from the petitioner's home, workplace, or school, or the daycare, workplace, or school of the petitioner's children, or restrict the respondent from coming within a specified distance of a specified location.
- Prohibit the respondent from conducting any form of surveillance of the petitioner or the petitioner's children.
- Order any other injunctive relief as necessary or appropriate for the protection of the petitioner, which can include mental health or chemical dependency evaluation, or both.

- Require the respondent to pay court costs, service fees, and attorneys' fees.

If the petitioner and respondent attend the same school the court may order the respondent to transfer schools. Any logistical and financial obligations for the school transfer are the responsibility of the parents or legal guardians of the person restrained in the order.

If circumstances warrant, the court is either required or allowed to order the respondent to surrender his or her firearms for the duration of the order.

Ex Parte Temporary Orders. An ex parte temporary stalking protection order may be issued if it appears from the petition and any additional evidence that the respondent has engaged in stalking conduct and that irreparable injury could result if an immediate order is not issued without prior notice. An ex parte temporary stalking order is effective for a fixed period, not to exceed 14 days, or 24 days if service by publication or mail is permitted. A full hearing must be set for no later than the expiration date of the temporary order. The respondent must be personally served with notice of the temporary order and hearing and a copy of the petition.

Final Orders. A final stalking protection order is effective for a fixed period of time or is permanent. Any stalking protection order, regardless of whether it is a final order or a temporary ex parte order, may be renewed one or more times. If no change in the order is sought, the order may be renewed on the basis of the petitioner's motion or affidavit stating that there has been no material change in relevant circumstances. The court must renew the petition unless the respondent proves by a preponderance of the evidence that they will not resume the stalking conduct in the order's absence.

Upon application with notice to all parties and after a hearing, the court may modify the terms of an existing stalking protection order. If the respondent moves for termination, the respondent must provide the court with a declaration of facts supporting the request. Unless there is adequate cause for a hearing based on the declaration, the court is required to dismiss the motion. To obtain a modification the respondent has to prove by a preponderance of the evidence that there has been a substantial change in circumstances such that the respondent will not resume the stalking conduct in the absence of the order or under a modified order. The respondent may be required to pay the petitioner's attorneys' fees.

A knowing violation of a temporary or final stalking protection order is a gross misdemeanor unless the violation is for assault or reckless endangerment or the respondent has had two prior violations of a similar injunction, in which case the violation is a class C felony.

Stalking Protection Orders in Conjunction with Criminal Proceedings.

Whenever a person charged with or arrested for stalking or a stalking related offense is released from custody pending arraignment or trial, if there is no outstanding restraining or protection order, the court may issue a stalking protection order. At the time of arraignment or whenever a motion is brought to modify the conditions of release, electronic monitoring may be ordered in conjunction with the order.

Stalking protection orders issued in conjunction with criminal charges terminate if the defendant is acquitted or the charges are dismissed. However, if the victim files an independent action for a stalking protection order, the court may maintain the order until a full hearing is conducted

pursuant to the rules for the civil stalking protection order. If the defendant is convicted, and if a condition of the sentence restricts the defendant's ability to have contact with the victim, the condition is recorded as a stalking protection order. A final stalking protection order entered in conjunction with a criminal prosecution remains in effect for a period of five years from the date of entry.

Other Provisions.

The superior court of each county may appoint one or more attorneys to act as protection order commissioners, effective upon approval of the legislative authority in the affected county.

By January 1, 2014 the Administrative Office of the Courts is required to develop a single master petition pattern form for all antiharassment and stalking protection orders.

Changes are made to the felony stalking provisions and corresponding sentences. Felony stalking is reclassified from a class C felony to a class B felony. Court employees, court clerks, and courthouse facilitators are added to the list of persons of whom stalking constitutes a felony. Certain stalking offenses are added to the list of statutory aggravators that provide a basis for exceeding the standard sentencing range.

Appropriation: None.

Fiscal Note: Available.

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