

HOUSE BILL REPORT

SSB 5452

As Reported by House Committee On:
Judiciary

Title: An act relating to no-contact and protection orders for stalking and harassment.

Brief Description: Concerning no-contact and protection orders for stalking and harassment.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Conway, Carrell, Darneille and Kohl-Welles).

Brief History:

Committee Activity:

Judiciary: 3/28/13, 4/2/13 [DPA].

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

- 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 no-contact order during the pendency of criminal prosecutions for stalking and related offenses.
- Requests that the Administrative Office of the Courts develop a master pattern form for all antiharassment and stalking protection order petitions.
- Expands the categories of behavior that qualify as felony stalking, and increases the penalties for felony stalking.
- Authorizes creation of protection order commissioners.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 11 members: Representatives Pedersen, Chair; Hansen, Vice Chair; O'Ban, Assistant Ranking Minority Member; Goodman, Jinkins, Kirby, Klippert, Nealey, Orwall, Roberts and Shea.

Staff: Omeara Harrington (786-7136).

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.

Background:

Protection Orders and No-Contact Orders.

There are various types of civil protection orders a court may grant to restrict a person's ability to have contact with another person. 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. 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 to obtain an antiharassment protection order.

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. 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 may involve a surrender of firearms, depending on the restrained person's criminal history. 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 is defined as 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 Amended 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 that results in reasonable feelings of intimidation or threat in the petitioner, and that the stalker knows or reasonably should know causes such feelings, even if that was not the stalker's intent.

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. The court must hold a hearing within 14 days of receiving the petition. 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 authorize service by publication or mail if certain criteria are met. The court may issue a temporary stalking order pending the full hearing. The hearing may be held by telephone under certain circumstances.

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 are 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, or from conducting any form of surveillance of the petitioner or the petitioner's children;
- 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;
- require the respondent to transfer schools, if the petitioner and respondent attend the same school;
- 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; or
- require the respondent to pay court costs, service fees, and attorneys' fees.

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 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, and may be modified upon approval of the court. Procedures for renewal and modification of orders are provided.

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 No-Contact Orders.

When 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 no-contact order. Electronic monitoring may be imposed at the time of arraignment or whenever a motion is brought to modify the conditions of release. A stalking no-contact order may also be entered as a condition of a criminal sentence, and remains in effect for a period of five years from the date of entry. A stalking no-contact order terminates if the defendant is acquitted or the charges are dismissed.

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.

The Legislature respectfully requests that, by January 1, 2014, the Administrative Office of the Courts create a single master petition pattern form for all antiharassment and stalking protection orders. The Legislature also respectfully requests that the Washington Supreme Court Gender and Justice Commission provide recommendations about possible remedies to the confusion over the type of protection order a petitioner should seek.

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.

Amended Bill Compared to Substitute Bill:

The intent section is modified to include a statement that protection of victims of stalking conduct can be accomplished without infringing on constitutionally protected speech or activity.

The provision that specifically states that commissioners may consult the Judicial Information System before granting antiharassment protection orders is removed.

The Gender and Justice Commission (Commission) is provided with a list of other organizations to consult with in producing recommendations for the Legislature regarding reducing the confusion over what type of order petitioners should seek.

Language is added to note that the request that the Administrative Office of the Courts develop a master petition pattern form is a respectful request by the Legislature, and that the request that the Commission consider solutions and provide recommendations is a request that it do so to the extent that it is able.

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) The effort to strengthen the law regarding protection of stalking victims has been underway for several years. The stalking protection order provides protections for a group of people who are not sufficiently covered under current law. The language in the bill is a good reflection of current practice used with other types of orders. The amendments made to the House of Representatives' companion bill should be added.

A person cannot be held criminally liable for violating an order they do not know about. If a respondent who is served by publication does not actually know of the order, the police can still intervene; however, the conduct does not become criminal until the restrained person knows of the order.

(In support with concerns) Service by publication and mail is troublesome. The bill needs stronger provisions to address situations in which service is not successful or the respondent does not appear. There should be proof that service has been accomplished. The sender's address for purposes of service by mail should be the court's address to prevent the victim from having to provide a personal address.

(Opposed) None.

Persons Testifying: (In support) Senator Conway, prime sponsor; Ken Paulson; Tom McBride, Washington Association of Prosecuting Attorneys; and Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs.

(In support with concerns) Steve Lindstrom, Washington State Process Servers Association.

Persons Signed In To Testify But Not Testifying: None.