

SENATE BILL REPORT

ESHB 1383

As of March 28, 2013

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

Brief Description: Modifying stalking and harassment protection order provisions.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Goodman, Fey, Kirby, Orwall, O'Ban, Roberts, Jinkins, Hope, Angel, Smith, Dahlquist, Wilcox and Kristiansen).

Brief History: Passed House: 3/11/13, 98-0.

Committee Activity: Human Services & Corrections: 3/28/13.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Staff: Shani Bauer (786-7468)

Background: There are several kinds of orders available to limit respondents' contact with victims. No-contact orders are commonly issued as part of criminal proceedings, and civil protection orders are available regardless of whether a criminal case is pending. Generally, violation of a protection order or no-contact order is a gross misdemeanor. If the restrained person has two prior convictions for violations or the violation involves reckless endangerment or assault, the violation is a class C felony.

Domestic Violence Protection Order. Civil 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. In addition to restraining further acts of domestic violence, the order can prohibit the perpetrator from contacting the victim or knowingly coming within a specified distance of a location. Additionally, no-contact orders can be issued in criminal cases involving domestic violence. They may be issued before, after, or concurrently with civil protection orders. No-contact orders automatically expire at arraignment – unless extended or reissued, upon dismissal, acquittal, or upon termination of the sentence or elimination of that condition of the sentence.

Civil Anti-Harassment Protection Orders. A person who is the victim of unlawful harassment may petition the court for a civil anti-harassment protection order against the alleged harasser – the respondent. Unlawful harassment means a willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person and that has no

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legitimate purpose. The course of conduct must be of a type that would cause a reasonable person to suffer substantial emotional distress and must actually cause the petitioner to suffer substantial emotional distress. A court may grant an ex parte temporary anti-harassment protection order and, after a full hearing, a long-term anti-harassment protection order. Both orders require the respondent to refrain from engaging in harassment and may include provisions prohibiting the respondent from contacting the petitioner or from going within a certain distance of the petitioner's home or workplace.

Stalking. A person commits the crime of stalking if they intentionally and repeatedly harass or repeatedly follow another person, which places the person in fear that the stalker intends to injure them, another person, or their property. The stalker must know or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker does not intend to place the person in fear, intimidate, or harass the person.

Cyberstalking. A person is guilty of cyberstalking if the person makes an electronic communication with the intent to harass another person: using obscene words or images; suggesting the commission of an obscene act; anonymously or repeatedly whether or not conversation occurs; or threatening to inflict injury on the person, the property of the person, or any member of the person's family or household.

Summary of Bill: A new action is created authorizing a petition for a stalking protection order. Any person who does not qualify for a domestic violence protection order may file for a stalking protection order if the person was the victim of stalking conduct. Stalking conduct is defined as any act of stalking or cyberstalking as defined in the criminal code or any course of conduct involving repeated attempts to contact, monitor, track, or follow another that: (1) would cause a reasonable person to feel intimidated, frightened, or threatened and which actually causes that feeling; (2) serves no lawful purpose; and (3) the stalker knows or reasonably should know threatens, frightens, or intimidates the person, even if the stalker did not intend to intimidate, frighten, or threaten the person. A court may grant an ex parte temporary stalking protection order and, after a full hearing, a long-term stalking protection order. Both orders require the respondent to refrain from stalking the victim and may include provisions prohibiting the respondent from contacting the petitioner or from going within a certain distance of the petitioner's home or workplace.

The Administrative Office of the Courts must develop a single master petition pattern form for all anti-harassment and stalking protection orders to assist victims in filing for protection orders. The Supreme Court Gender and Justice Commission, in consultation with the Washington Coalition of Sexual Assault Programs, Washington State Coalition Against Domestic Violence, Washington Association of Prosecuting Attorneys, Washington Association of Criminal Defense Lawyers, and Washington Association of Sheriffs and Police Chiefs, is respectfully requested to consider potential solutions to reduce confusion about which type of protection order a petitioner should seek.

Stalking is an aggravating circumstance that may be considered by a jury in order to support a sentence above the standard sentence range. A no-contact stalking order is defined. If a defendant is charged with the crime of stalking and the court issues an order protecting the victim, the court must issue a no-contact stalking order.

A violation of a stalking protection or no-contact order is a gross misdemeanor. If the person has two previous convictions for violating an order, violation is a class C felony.

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: This bill was three years in the making in response to an incident that occurred to Jennifer Paulson who was stalked for several years and eventually killed in front of her place of employment. This is just one of a list of horrible examples of victims being stalked. This bill improves protection for victims of stalking. Courts, clerks, and the victim's community are all in support of this bill. The only protection currently available is an anti-harassment order, which is completely ineffective to address this type of behavior. District courts agreed to take original jurisdiction of these matters, which greatly reduced the fiscal impact. Additionally, a person does not need to decide whether a stalking order or anti-harassment order will apply. One form will be used and the court will decide based on the evidence which order is appropriate. The stalking behavior that led to the death of Jennifer Paulson included multiple phone call hang-ups, hanging out in the parking lot of her place of employment, and occasionally leaving flowers on her car. At no time did he approach and break the windows of her car or engage in other violent behavior. On one occasion, he followed her while she was in her car and eventually they crossed paths. It was clear he was very excited to come face to face with her and make contact. He did not believe his contact was wrong. For this reason, it is very difficult for a victim to prove that the perpetrator intends to harm the victim in some manner. Just like with a sexual assault or other type of protection order, the prosecutor must prove that someone knowingly violated the order. A person must actually know about the order in order to be convicted of a violation.

Persons Testifying: PRO: Representative Goodman, prime sponsor; Tom McBride, WA Assn. of Prosecuting Attorneys; Ken Paulson, Richard Hicks, citizens.