

HOUSE BILL REPORT

HB 1180

As Reported by House Committee On: Judiciary

Title: An act relating to expanding the protections for victims of stalking and harassment in antiharassment protection orders.

Brief Description: Expanding the protections for victims of stalking and harassment in antiharassment protection orders.

Sponsors: Representatives Goodman, Pedersen, Roberts, Maxwell, Kenney, Orwall, Rolfes, Lias, Kelley, Hurst, Frockt, Fitzgibbon, Upthegrove, Ladenburg, Stanford, Dickerson and Jinkins.

Brief History:

Committee Activity:

Judiciary: 1/31/11, 2/3/11, 2/10/11 [DPS].

Brief Summary of Substitute Bill

- Allows courts to require respondents to civil anti-harassment protection orders to submit to global positioning system monitoring.
- Requires the courts to designate a civil anti-harassment protection order as based on stalking when unlawful harassment by a respondent constitutes stalking.
- Requires mandatory arrests for violations of civil anti-harassment protection orders based on stalking, and requires the courts to order a defendant to submit to global positioning system monitoring for 14 days following release from custody.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Chandler, Eddy, Frockt, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

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.

Staff: Kelly Pfundheller (786-7289).

Background:

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 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. A respondent who knows of and willfully disobeys a civil anti-harassment protection order is guilty of a gross misdemeanor.

A law enforcement officer may arrest and take into custody a person without a warrant when the officer has probable cause to believe that the person has violated a civil anti-harassment protection order.

Summary of Substitute Bill:

Several changes are made in relation to civil anti-harassment protection orders in regards to the types of relief provided to petitioners seeking protections against and to all petitioners.

Civil Anti-Harassment Protection Orders.

Global positioning system (GPS) monitoring is defined as an automated and time-correlated monitoring system that tracks a person's geographic location by a device that uses the GPS, and that provides a mechanism for a third party to receive notification when a monitored person breaks a distance restriction imposed by a court.

In granting a civil anti-harassment protection order, the court may require a respondent to participate in treatment or counseling services. The court may also require a respondent to submit to GPS monitoring if there is clear and convincing evidence that he or she poses a danger to the petitioner. In assessing danger, the court must consider whether the respondent has:

- previously committed violent acts against the petitioner;
- threatened the petitioner with harm;
- threatened or is threatening suicide;
- visited the petitioner's residence against his or her requests;
- demonstrated escalating violent or stalking behavior; and
- a history of violating protection orders.

The court may order the respondent to pay the costs of the monitoring unless the respondent is unable to pay the costs.

Civil Anti-Harassment Orders Based on Stalking.

If the court finds that a respondent has engaged in unlawful harassment constituting stalking, the court must designate the civil anti-harassment protection order as based on stalking. The court must notify the respondent of the nature of the order, the mandatory arrest requirement, the criminal penalties for violations, and the court's authority to modify or terminate the order.

For the purposes of the designation, the term "stalking" occurs when a respondent directly or indirectly threatens or repeatedly acts in a manner that would cause a reasonable person to be in fear for the petitioner's safety or the safety of the petitioner's family or another person with whom the petitioner has or has had a continuing relationship, and one of the following applies:

- the respondent repeatedly follows, approaches, contacts, or places under surveillance the petitioner, a member of the petitioner's family, or someone with whom the petitioner has or has had a continuing relationship; or
- the respondent repeatedly makes any form of communication to the petitioner, a member of the petitioner's family, or someone with whom the petitioner has or has had a continuing relationship.

The Administrative Office of the Courts must develop a new pattern form for civil anti-harassment protection orders based on acts of stalking. When the court issues an anti-harassment protection order based on stalking, the order must comply with the pattern form.

A law enforcement officer must arrest and take into custody a person without a warrant when the officer has probable cause to believe that the person has violated a civil anti-harassment protection order based on stalking. During the preliminary appearance for criminal charges based on the violation, the court must issue an order requiring the person to submit to GPS monitoring for at least 14 days following his or her release from custody. The court may require the person to pay for the costs of monitoring unless the person is unable to pay the costs. If the charges are dismissed or the person is acquitted, the county must return the payment to the person at his or her last known address.

Substitute Bill Compared to Original Bill:

The term "electronic monitoring" is changed to "GPS monitoring," which is defined. The court cannot impose GPS monitoring at the ex parte stage of the proceedings, but can do so upon hearing the petition. Monitoring may only be imposed if there is clear and convincing evidence that the respondent poses a danger to the petitioner. The court may also require the respondent to participate in counseling and treatment services.

A new definition of stalking is used (rather than referencing the current definition in the criminal code) for the purposes of the stalking designation. The substitute bill requires the courts to order a person to submit to GPS monitoring for 14 days following his or her release

from custody when charged with violating an anti-harassment protection order based on stalking.

The court is allowed to incorporate its oral findings of fact by reference (rather than enter written findings) when issuing an anti-harassment protection order based on stalking.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute 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 bill is a response to recent incidents where anti-harassment protection orders did not provide adequate protections for victims of stalking. The new stalking designation will force the courts and law enforcement to take a protection order seriously when it is based on stalking. Allowing the courts to impose GPS monitoring will empower victims and provide protections against stalkers and violent persons.

There have been incidents where victims, the courts, and law enforcement have acted in accordance with the law relating to protection orders, but it simply was not enough. Stalkers and other violent persons are not deterred by protection orders because there are not serious consequences for violations. The bill should be amended to require stalkers to submit to GPS monitoring after an arrest and for the entire pretrial period related to a charge of violating an order. In addition, respondents should be required to receive a mental health evaluation. Violation of an order should be a class C felony. If these types of restrictions and consequences had been in place in the past, then maybe some victims would not have lost their lives.

(In support with concerns) This bill is a step in the right direction. However, the courts are currently allowed to impose electronic monitoring when issuing domestic violence protection orders and they simply never do so. There must be measures taken to educate judges about changes in the law. There should also be repercussions in place for responding to violations of an order. We need to make sure that there is a remedy that does not place an additional burden on victims. Also, the parties to an order should be required to complete service of process through the sheriff or other local law enforcement in order to ensure adequate notice.

(Opposed) Allowing the courts to impose electronic monitoring in relation to a civil matter, especially at the ex parte stage of proceedings, constitutes an unlawful deprivation of liberty under both federal and state law. A respondent does not have an opportunity to respond to allegations at the ex parte stage. The law requires notice and an opportunity to be heard before taking away liberty. Therefore, electronic monitoring should only be permitted in the criminal context where persons are represented and due process is required. In addition, this bill does not fully consider the impact on indigent persons.

Persons Testifying: (In support) Representative Goodman, prime sponsor; Ken Paulson; Cindy Paulson; Nancy Heisler; and Ned Heisler.

(In support with concerns) Grace Huang, Washington State Coalition Against Domestic Violence; David Ward, Legal Voice; and Arthur West.

(Opposed) Rick Batholomew, Washington State Bar Association Family Law Section; and Bob Cooper, Washington Defenders Association and Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.