

SUBJECT: Civil liability for stalking

COMMITTEE: Civil Practices — favorable, without amendment

VOTE: 6 ayes — T. Hunter, Culberson, Hartnett, Moffat, Sadler, Zbranek

0 nays

3 absent — Hilbert, Alvarado, Tillery

WITNESSES: For — Georgie Rasco, Karen Villers, Norma Jahn, Mike Gallagher

Against — None

DIGEST: HB 43 would create a civil cause of action to allow stalking victims to sue stalkers for damages. Victims could recover actual damages and exemplary damages.

To prove that a person was stalking them, victims would have to show that the defendant engaged in harassing behavior more than once, that they feared for their safety or the safety of their family and that the defendant violated a restraining order or that the defendant threatened bodily injury or to commit an offense against them or their family or property, the defendant had the apparent ability to carry out the threat and it caused them to fear for their safety, they demanded at least once that the defendant stop the behavior and that the defendant continued the behavior. Harassing behavior would be defined as conduct directed specifically toward a person, including following them, that is reasonably likely to harass, annoy, alarm, abuse, torment or embarrass them. Proof of the harassing behavior would have to include evidence other than the claimant's own perceptions and beliefs.

It would be a defense that the defendant was engaged in conduct that was activity in support of constitutionally or statutorily protected rights. Victims could sue for damages under HB 43 in addition to other causes of action provided by common law or statute.

**SUPPORTERS
SAY:**

HB 43 would strengthen the anti-stalking legislation enacted in 1993 by allowing victims to sue their stalkers in civil courts for actual and exemplary damages. Victims would be able to recover for damages such as slashed tires, broken windows, therapy or other expenses and to recover additional money as punitive damages to punish and deter the stalker. Stalking victims could also seek to recover their own expenses, including changing their name and phone number, moving and hiring body guards.

HB 43 would make stalkers financially liable for their actions and act as an additional deterrent along with criminal penalties. In criminal cases behavior related to stalking is sometimes prosecuted as, or plea bargained to, a less serious offense, and in some areas, especially rural areas, law enforcement authorities may not take criminal stalking seriously. The civil action that would be created by HB 43 could be the only remedy for some victims and would allow penalties to be imposed on offenders who dodge criminal stalking charges. In addition, it can be easier to prove a case in civil courts where the standard is a preponderance of the evidence than in criminal courts where guilty must be established beyond a reasonable doubt.

HB 43 would ensure that it would not be used against innocent behavior by establishing many conditions that must be met to prove harassing behavior and requiring proof beyond the victim's own perceptions. In addition, constitutional behavior would be protected.

**OPPONENTS
SAY:**

Allowing victims to recover damages from accused stalkers could distort the criminal justice system by leading victims to pursue criminal charges more zealously because a criminal conviction would make it easier to recover civil damages. HB 43 could clog the court systems by resulting in two trials, one civil and one criminal, for the same behavior.

NOTES:

The companion bill, SB 145 by Moncrief, has been referred to the Senate Criminal Justice Committee.