

# HOUSE BILL REPORT

## HB 2427

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**As Reported by House Committee On:**  
Public Safety & Emergency Preparedness

**Title:** An act relating to punishment for domestic violence offenders.

**Brief Description:** Ensuring punishment for domestic violence offenders.

**Sponsors:** Representatives Pearson, Hurst, Bailey, Goodman, Kirby, Chandler, Herrera, O'Brien, Warnick, Ross, Condotta, Dammeier, Shea, Klippert, Smith, Walsh, Parker, Jacks, Blake, Rodne, Williams, McCune, Campbell, Johnson, Eddy, Morrell, Kelley, Short, Maxwell, Sullivan, Conway, Roach, Kristiansen, Haler, Sells, Schmick, Ericks, Ormsby, Kretz, Moeller and Hope; by request of Attorney General.

**Brief History:**

**Committee Activity:**

Public Safety & Emergency Preparedness: 1/12/10, 1/13/10 [DPS].

**Brief Summary of Substitute Bill**

- Double scores prior felony offenses that are domestic violence-related and single scores prior non-felony offenses that are domestic violence-related for purposes of calculating an offender's sentence.

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### HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Hurst, Chair; O'Brien, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Appleton, Goodman, Kirby and Ross.

**Staff:** Yvonne Walker (786-7841).

**Background:**

Under the Sentencing Reform Act (SRA), an offender convicted of a felony has a standard sentence range that is based on the seriousness of the offense and the offender's prior felony

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convictions. The number of points an offender receives for current and prior felonies varies according to certain rules.

Domestic violence can be generally defined as any action that causes physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; sexual assault of one family or household member by another; or the stalking of one family or household member by another family or household member.

Often victims of domestic violence seek help through a court order. There are several types of orders a court may grant that restrict a person's ability to have contact with another: (1) protection orders; (2) no-contact orders; (3) restraining orders; and (4) foreign protection orders.

Protection Orders. Protection orders can be issued by a court in civil proceedings. There are two types of protection orders authorized by statute: domestic violence protection orders and anti-harassment protection orders. A victim of domestic violence can obtain a domestic violence protection order against a respondent. The order can provide several types of relief including electronic monitoring, batterer's treatment, and a requirement that the respondent refrain from contacting the petitioner. Violation of a domestic violence protection order is a gross misdemeanor unless the respondent has two prior convictions for violating a domestic violence protection order or other similar federal or out-of-state order, in which case the violation is a class C felony.

No-Contact Orders. No-contact orders can be issued by a court in a criminal proceeding. The court generally issues no-contact orders when a defendant is released from custody prior to trial or as part of the defendant's sentence. There are two types of prosecutions for which no-contact orders are statutorily authorized: prosecutions for criminal harassment and prosecutions for crimes involving domestic violence. A law enforcement officer must enforce a no-contact order issued as part of a prosecution for a crime involving domestic violence. Violation of such a no-contact order is a gross misdemeanor, unless the defendant has two previous convictions for violating a domestic violence protection order or other similar federal or out-of-state order, in which case the violation is a class C felony.

Restraining Orders. As part of a civil proceeding, a court may also issue a restraining order that enjoins the person subject to the order from contacting another party. Such restraining orders can be permanent or temporary. A court can grant a permanent or temporary restraining order as part of a divorce proceeding, a non-parental action for child custody, an action involving the abuse of a child or an adult dependent person, or a paternity action. A court can grant a temporary restraining order (and not a permanent restraining order) in connection with proceedings where there have been allegations of abuse of a child or a dependent adult person. A violation of a restraining order issued as part of a divorce proceeding or an action involving the abuse of a child or an adult person is a misdemeanor. A violation of a restraining order issued as part of a non-parental action for child custody or a paternity action is a gross misdemeanor.

Foreign Protection Orders. A foreign protection order is an injunction or similar order relating to domestic violence, Harassment, sexual abuse, or Stalking issued by a court of

another state, territory, or possession of the United States, the Commonwealth of Puerto Rico, the District of Columbia, a United States military tribunal, or a tribal court. A violation of a foreign protection order is generally a gross misdemeanor, but becomes a class C felony in the following three circumstances: (1) the violation is an assault that does not amount to assault in the first or second degree; (2) the violation involved conduct that is reckless and creates a substantial risk of death or serious physical injury to another person; or (3) the offender has at least two prior convictions for violating the provisions of a no-contact order, a domestic violence protection order, or a comparable federal or out-of-state order.

#### Aggravating Circumstances.

Under the SRA, the court must impose imprisonment in addition to the standard sentencing range if specific conditions for sentencing enhancements are met. The U. S. Supreme Court, in *Blakely v. Washington*, ruled that any factor that increases a defendant's sentence above the standard range, other than the fact of a prior conviction, must be proven to a jury beyond a reasonable doubt. To do otherwise would violate the defendant's right to a jury trial under the Sixth Amendment. One of the many aggravating circumstances that must be found by a jury beyond a reasonable doubt includes that the current offense involved domestic violence and the offense was part of an ongoing pattern of psychological, physical, or sexual abuse of "a victim" manifested by multiple incidents over a prolonged period of time.

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#### **Summary of Substitute Bill:**

The formula for calculating an offender's score is adjusted. For the purpose of computing an offender's score, if the present conviction is for a "felony domestic violence offense," an offender must receive:

- two points (double score) for each prior adult and juvenile offense involving one of the following crimes:
  1. felony violation of a no-contact order or protection order (first and second degree Assault);
  2. felony Harassment domestic violence;
  3. felony Stalking domestic violence;
  4. first degree Burglary domestic violence;
  5. first and second degree Kidnapping domestic violence;
  6. Unlawful Imprisonment domestic violence;
  7. first and second degree Robbery domestic violence;
  8. first, second, and third degree Assault domestic violence; and
  9. first and second degree Arson domestic violence.
  
- one point (single score) for each serious domestic violence offense where domestic violence was plead and proven. "Serious domestic violence offenses" include: non-felony domestic violence Assault, non-felony domestic violence violation of a court order (no-contact order or domestic violence protection order), non-felony domestic violence Harassment, and non-felony domestic violence Stalking.

Serious domestic violence convictions must not be included in an offender's score if the offender has spent 10 years in the community without being convicted of a new crime since his or her last date of release from confinement or entry of judgment and sentence.

A "Felony Domestic Violence offense" is defined as including:

- but is not limited to any of the following crimes when committed by one family or household member against another: first, second, third, and fourth degree Assault, Drive-by Shooting, Reckless Endangerment, Coercion, first and second degree Burglary, first and second degree Criminal Trespass, first, second, and third degree Malicious Mischief, first and second degree Kidnapping, Unlawful Imprisonment, violation of the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going onto the grounds of or entering a residence, workplace, school, or daycare, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, first and second degree Rape, Residential Burglary, Stalking, and Interference with the reporting of domestic violence; and
- physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; sexual assault of one family or household member by another; or stalking of one family or household member by another family or household member.

Aggravating Circumstance.

One of the aggravating circumstances is amended to include a current offense that is involved in domestic violence where the offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or "multiple victims" manifested by multiple incidents over a prolonged period of time.

**Substitute Bill Compared to Original Bill:**

Several technical amendments were made that included:

- clarifying that the bill will only go into effect for new domestic violence related crimes committed after August 1, 2011;
- deleting no contact order offenses and residential burglary offenses (that are domestic violence-related) off the list of offenses that will now be scored one point on the SRA grid. These offenses are already scored one point under current statute; and
- adding Assault 1 offenses that are domestic violence-related to the list of offenses that are to be double scored on the SRA grid. The original bill as drafted only included Assault 2 and Assault 3 offenses as double score-able offenses.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect on August 1, 2011.

**Staff Summary of Public Testimony:**

(In support) Between January 1997 and June 2006 there have been an estimated 359 people killed by domestic violence abusers. Last year the Pierce County YMCA served an estimated 300 women and children in shelters and had to turn away over 200 people. There are enumerable costs that relate to each domestic violence offense that takes place. Domestic violence affects not only the victim, but the victim's friends, family members, employers, police officers, and the community at large.

Studies have shown that there is a small group of offenders that recidivate. This bill targets the worst of the worst serial domestic violence abusers. Passage of this legislation will help restore victim confidence in the criminal justice system by putting serial abusers away for a long time and holding them accountable. This bill will not only target violent crime but will also save lives.

Washington has always been a leader in preventing domestic violence but last year's economy and fiscal constraints had a devastating effect in the community. Many programs were eliminated, services were reduced, and many programs lost valuable employees. In addition, an amendment is suggested to clarify that there will be no retroactive scoring until after the date of implementation.

(With concerns) As the initial reaction to reading this bill, we have no fear in our prosecutor office's that this is going to overwhelm us. They do not have any money this year. We are not going to have something that is going to cost a lot of money that: (1) is going to have a chance of passing, and (2) if it is something that is going to be used widely in our office and we have to do this all the time, we cannot do this. We do not have the personnel. That is the point to stress and when reading the bill and looking at what it will actually do, this will be very narrowly applied to the people who are the most likely to kill someone. Those are the people that we have to stop in some fashion. In sitting down with victims of domestic violence over the years, many of them often asked the question, can you keep me safe? Well currently an offender can have five or six misdemeanors, even against the same victim, and if he is charge with an Assault 2 domestic violence offense, his range is going to be three to nine months of county time When they hear that, you should see the looks on their faces. They figure I safer with him then with you. This would give us a chance to change that.

(Opposed) It appears the way the bill is currently structured that there may be a *Blakely v. Washington* problem relating to when the sentencing occurs. It is suggested that the bill should be reviewed for potential constitutional problems that could result in costly litigation.

**Persons Testifying:** (In support) Representative Pearson, prime sponsor; Trese Todd, Thrivers Action Group; Natalie McNair-Huff, YWCA Pierce County; David Martin, King County Prosecuting Attorney; Mickey Newberry and Chris Johnson, Office of the Attorney General; and Judy Bradley, Washington Federation of State Employees.

(With concerns) Mark Roe, Snohomish County Prosecuting Attorney.

(Opposed) Michael Hanbey, Washington Association of Criminal Defense Lawyers.

**Persons Signed In To Testify But Not Testifying:** None.