

HB 1884

*As Reported By House Committee on:
Judiciary*

Title: An act relating to domestic violence.

Brief Description: Providing for domestic violence programs and community response.

Sponsor(s): Representatives Ebersole, Forner, Belcher, Locke, Spanel, Peery, Phillips, H. Myers, Riley, R. Johnson, Paris, Wineberry, Ogden, Ludwig, Edmondson, Zellinsky, Brough, Jacobsen, Nelson, Miller, Holland, Winsley, Roland, Hine, Brekke, Rasmussen, Fraser, Mitchell and Orr.

Brief History:

Reported by House Committee on:
Judiciary, March 5, 1991, DPS.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *That Substitute House Bill No. 1884 be substituted therefor, and the substitute bill do pass.*

Signed by 19 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Belcher; Broback; Forner; Hargrove; Inslee; Locke; R. Meyers; Mielke; H. Myers; Riley; Scott; D. Sommers; Tate; Vance; and Wineberry.

Staff: Pat Shelledy (786-7149).

Background: The Human Services Roundtable, which is comprised of voluntary local organizations, met for a period of two years and worked with criminal justice representatives, victim advocates, health care providers, and others to develop recommendations for a comprehensive coordinated community response to domestic violence. The roundtable has made a number of recommendations for development of new programs, expanded funding of existing programs, further research of domestic violence and related issues, and recommendations for substantive changes in the law.

Some of the existing programs include grant programs to local shelters through the Department of Social and Health Services and victims compensation funding to victims of domestic violence.

Victims of domestic violence may receive money through crime victims compensation for certain services. However, victims may not receive compensation under the program if the victim consented, provoked, or incited the act that led to the injury for which the victim seeks compensation. Family members of the victim of domestic violence are not entitled to benefits under the program unless the victim of domestic violence dies from the attack.

Last year, the Legislature authorized the counties to impose an optional local sales and use tax. Any revenues generated under the tax are to be used exclusively for criminal justice purposes, and may not replace or supplant existing funding.

The Domestic Violence Protection Act provides a procedure for a person who is a victim of domestic violence to obtain an order for protection in a civil proceeding.

If a criminal proceeding is pending or a person is sentenced for an act of domestic violence, the victim may obtain a no-contact order through the criminal proceeding. Various crimes are considered "domestic violence" when the crime is committed by one family member against another. Under those acts, the term "family or household members" means "adult persons" related by blood or marriage, persons who are presently residing together, or who have resided together in the past, and persons who have a child in common. The definition is ambiguous about whether the act governs juveniles.

Assaults range from gross misdemeanors to class A felonies depending upon the seriousness of the assault. Certain assaults that would ordinarily be considered gross misdemeanors are increased to class C felony status for various reasons, such as the assault occurred against an officer in the performance of the officer's duties, or the assault occurred against a bus driver while the bus was moving and other passengers were aboard. A class C felony carries a maximum penalty of five years in custody, although the sentencing reform act ranges would determine the actual range. Reckless endangerment may be a gross misdemeanor which carries a maximum penalty of one year in jail or a class C felony, depending on the degree of crime. Currently, the class of the assault on reckless endangerment does not increase when the crime was committed in violation of a protective or no-contact order.

Certain confidentiality statutes exist that prohibit dissemination of records maintained by an agency about the treatment of a victim. For example, a statute exists that restricts dissemination by a rape crisis center of the

records concerning a rape victim unless a specific procedure is followed by a court upon motion for review of the records. No similar provision exists for maintaining the confidentiality of records that may be maintained by a domestic violence program.

Summary of Substitute Bill:

1. Legislative Findings. The Legislature makes a number of findings about the severity of the problem of domestic violence, the need for an integrated and adequately funded system to assure a wide range of services, the need for establishing quality standards for treatment programs, training of professionals, and further research. The Legislature also finds that the perpetrator's alcohol and substance abuse may be a contributing factor to domestic violence.

2. Victims compensation - restriction on compensation when victim consented or provoked the violence. The restriction on receiving crime victims compensation funds when the victim consented, provoked, or incited the act resulting in injury is amended to provide that, when determining whether the victim consented or provoked the act, the reviewer should reasonably review the police report and in cases of domestic violence make an assessment that considers who was the primary physical aggressor.

3. Victims compensation - counseling and benefits for the victim and family members. Victims of domestic violence are entitled to receive appropriate counseling. Fees for the counseling will be determined by the Department of Labor and Industries in accordance with existing laws for determining fees for services. Counseling services may be provided to the victim's family who were living in the home and affected by the violence even if the family member did not witness the violence. Victims may be provided a one-time assistance award to aid in emergency relocation. The benefits for the victim and the family members must be based upon the entire abusive relationship.

4. Technical assistance program. The Department of Social and Health Services must establish a local assistance program to assist local communities in determining how to respond to domestic violence. A county or a group of counties can apply for technical assistance grants to develop a comprehensive plan for dealing with domestic violence.

5. Use of optional sales tax revenues for domestic violence advocates. The use of the local optional sales tax that was enacted during the 1990 session for the exclusive use of

criminal justice purposes is amended to include funding for domestic violence community advocates who are employed by local domestic violence programs to provide ongoing assistance to victims of domestic violence.

6. Department of Social and Health Services standards for programs that treat batterers. The Department of Social and Health Services must adopt rules for standards of approval of domestic violence programs that treat batterers. The programs must: (1) provide treatment that meets certain minimum qualifications, including consideration of a variety of diagnostic tools, length of treatment, and type of treatment; (2) have policies and procedures that assess the victim's safety; (3) require the batterer to sign release of information forms; (4) have policies and procedures for dealing with reoffenses; (5) provide criteria for completion of treatment; and (6) have qualified personnel to evaluate and treat the batterers.

7. Department Of Health study regarding certification of domestic violence perpetrator counselors. The Department of Health must conduct a study to determine whether counselors who treat domestic violence perpetrators should be certified. The department must conduct the study in accordance with provisions enacted in 1990 that provide that the Legislature intends not to regulate health professions except for the purpose of protecting the public interest.

8. Standing committee review of domestic violence issues. Certain standing committees in the House and the Senate must review various domestic violence issues and report to the Legislature by December 1991 with recommendations for solving a variety of issues, including: judicial process of domestic violence cases, client and therapist confidentiality restrictions, education of the public, children and professionals about domestic violence, state and local funding of domestic violence programs including capital funding, victim privacy, liability insurance for domestic violence programs, time periods for temporary protection orders, limitations on issuance of protection orders, and the best use of the civil protection order process when the victim or perpetrator is a minor.

9. Appropriation. An appropriation of \$4,000,000 is made from the general fund to the Department of Social and Health Services for the biennium ending June 30, 1993, for domestic violence programs. No more than \$400,000 of the \$4,000,000 may be spent on the technical assistance provisions. The remaining sums must be spent on domestic violence programs to add capacity or expand services under those programs.

10. Establishing a class C felony assault for assaults committed in violation of a protective order. An assault that is committed in violation of a no-contact order issued under a criminal action for a crime involving domestic violence or an ex-parte or permanent protective order issued under the Domestic Violence Protection Act is a class C felony, except assault in the first or second degree which are class A and B felonies respectively.

11. Reckless endangerment for recklessly endangering a person in violation of a protective order. A person is guilty of a class C felony, if the person recklessly engages in conduct which creates a substantial risk of death or serious physical injury to another person and the conduct is in violation of a no-contact order issued under a criminal action for a crime involving domestic violence or an ex-parte or permanent protective order issued under the Domestic Violence Protection Act.

12. Adding reckless endangerment in the first degree to the list of domestic violence crimes. Reckless endangerment in the first degree is added to the list of crimes that are defined as a crime of domestic violence when the crime is committed by one family or household member against another.

13. Clarifying the definition of "family or household members" in the Domestic Violence Protection Act. The definition of "family or household members" in the Domestic Violence Protection Act is amended to explicitly provide that the Domestic Violence Protection Act applies to adults and juveniles.

14. Confidentiality of client records maintained by domestic violence programs. The records maintained by a domestic violence program, which is defined as an agency that provides shelter, advocacy, and counseling for domestic violence victims, are confidential and may not be released except under certain circumstances: A written pretrial motion supported by affidavit states the reason for the discovery request, the court examines the records in camera to determine whether the probative value of the records outweighs the victim's privacy interest in maintaining confidentiality, and the court enters an order setting forth which portions of the records are subject to discovery and sets forth the reasons in writing.

15. Domestic Violence Shelters Act definitions. The Domestic Violence Shelter Act's definition section is repealed and replaced with another definition section updating definitions to comport with current law and adding new definitions.

Substitute Bill Compared to Original Bill: Provisions that would have required implementation of a certification program for counselors who treat batterers are stricken entirely. Instead, a study is added requiring the Department of Health to study the issue of counselor certification. In addition, the Department of Social and Health Services shall develop standards for approval of domestic violence perpetrator programs to establish standards for treatment and victim protection. A provision is stricken that created an ambiguity regarding superior court jurisdiction over protection order motions that involve juveniles. A provision is stricken that would have excluded child abuse from the provisions of the Domestic Violence Protection Act. The definition of "family household" member is redrafted to specifically include juveniles. The legislative study group is directed to review the best approach to the civil protection process manner in dealing with minors who are victims or perpetrators of domestic violence. The substantive criminal law sections creating a class C felony for assaults and reckless endangerment committed in violation of a protection order are rewritten. A portion of the intent section is rewritten to provide that alcohol and drug abuse do not cause domestic violence but may contribute to it. A provision is rewritten that clarifies that when a victim of domestic violence seeks victim compensation the application should be reviewed considering the primary physical aggressor standard. The appropriations section is drafted to provide more detail about how the money is to be spent.

Fiscal Note: Available on original bill. Revised fiscal note requested on March 7, 1991.

Effective Date of Substitute Bill: Section 15, the section requiring the Department of Health to study whether counselors who counsel perpetrators should be certified, takes effect immediately. The rest of the bill takes effect 90 days after adjournment of session in which bill is passed.

Appropriation: Yes.

Testimony For: Original Bill: Domestic violence is a pervasive and severe problem that requires a comprehensive community approach. The recommendations begin to implement that comprehensive approach.

Testimony Against: Original Bill: The governor's budget has not provided funding for the expanded programs. Regarding the certification of counselors who treat batterers, the Department of Health should review the proposal prior to adoption in compliance with a law enacted

in 1990 that requires the department to review any regulation of a health profession to determine if the regulation is necessary to protect the public.

Witnesses: Original Bill: PRO: Mike Ryherd, Human Services Roundtable; Judy Clibborn, Human Services Roundtable; Judge Carolyn Hayek, Federal Way District Court; Sheila Hargesheimer, Seattle City Attorney's Office; Gary Benton, Domestic Violence Intervention Committee; Gary Schauls, Seattle Municipal Probation Department, Nancy Ashley, Human Services Roundtable; Karen Reagan, Eastside Domestic Violence, Mary Pontarolo, Washington Coalition Against Domestic Violence; and Gloria Hemmen, Gender and Justice Implementation Committee. CON: Mary Ault, Department of Social and Health Services, Division of Children and Family Services (supports concept, but funding for bill is not in governor's budget). INFORMATION ONLY, WITH CONCERNS: Sherman Cox, Department of Health (addressing certifications); and Chris Rose, Department of Health (addressing certifications).