

# HOUSE BILL REPORT

## ESSB 6104

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*As Reported By House Committee on:  
Judiciary*

**Title:** An act relating to creating the crimes of first, second, and third degree assault against a child.

**Brief Description:** Creating the crime of assault on a child.

**Sponsor(s):** By Senate Committee on Law & Justice (originally sponsored by Senators Nelson, Rasmussen, Thorsness, Hayner, Sellar, A. Smith and Erwin).

**Brief History:**

Reported by House Committee on:  
Judiciary, February 28, 1992, DPA.

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**HOUSE COMMITTEE ON  
JUDICIARY**

**Majority Report:** *Do pass as amended.* 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 same elements of and penalties for crimes of first, second, and third-degree assault apply to adults and children regardless of the child's age or whether the parent has engaged in a history of abusing the child. Parents or adults who batter children may injure a child repeatedly through a series of intentional minor assaults before the adult assaults the child seriously enough to bring the child to the attention of the medical profession and law enforcement.

**First-degree Assault.** First-degree assault is committed when a person intends to inflict great bodily harm and: (a) assaults another with a firearm or any deadly weapon likely to produce great bodily harm or death; or (b) poisons a person; or (c) assaults another and inflicts great bodily harm. "Great bodily harm" means bodily injury which creates a probability of death, significant serious permanent

disfigurement, or a significant permanent loss or impairment of the function of a body part.

**Second-degree Assault.** Second-degree assault can be committed in a number of ways. The most common methods are as follows: The offender (a) intentionally assaults another and recklessly inflicts substantial bodily harm; (b) assaults another with a deadly weapon; or (c) knowingly inflicts bodily harm which by design causes such pain or agony as to be the equivalent of that produced by torture. "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, causes a temporary but substantial loss or impairment of the function of any body part, or causes a fracture.

**Third-degree Assault.** Third-degree assault can also be committed in a number of ways. The pertinent provisions are as follows: The offender (a) with criminal negligence, causes bodily harm to another person by a weapon, or (b) with criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering.

**Restrictions on inflicting injury that results in more than minor or temporary marks.** Certain disciplinary actions used against children are permissible and are defenses to charges of assault. Prohibited actions are specified in the statute. In general, force is excessive if it causes bodily harm greater than transient pain or minor temporary marks.

**Seriousness levels.** Seriousness levels for assault crimes are as follows: First-degree assault is seriousness level XII which carries a penalty of 62-82 months in prison for a first offense; second-degree assault is seriousness level IV which carries a penalty of 3-9 months in the county jail for a first offense; and third-degree assault is seriousness level III which carries a penalty of 1-3 months in the county jail for the first offense.

**Summary of Amended Bill:** New crimes of assault of a child in the first, second, or third degree are created. The crimes apply to adults age 18 and over who assault children under age 13.

**Assault of a child in the first degree.** Assault of a child in the first degree is committed when the person commits: (1) first-degree assault under current law; or (2) intentionally assaults the child and either (a) recklessly inflicts great bodily harm; or (b) causes substantial bodily harm and the person has previously engaged in a pattern or practice of either (1) assaulting the child which has resulted in bodily harm that is greater than transient

physical pain or minor temporary marks, or (2) causing the child physical pain or agony that is equivalent to that produced by torture.

**Assault of a child in the second degree.** Assault of a child in the second degree is committed if the adult commits: (1) second-degree assault under current law; or (2) intentionally assaults the child and causes bodily harm that is greater than transient physical pain or minor temporary marks and the person has previously engaged in a pattern or practice either (a) of assaulting the child which has resulted in bodily harm that is greater than transient physical pain or minor temporary marks, or (b) of causing the child physical pain or agony that is equivalent to that produced by torture. Assault of a child in the second degree is placed at seriousness level IX, which carries a penalty of 31-41 months in prison.

**Assault of a child in the third degree.** Assault of a child in the third degree is committed if the adult commits third-degree assault under current law. Assault of a child in the third degree is at the same seriousness level as third-degree assault.

**Technical cross-reference changes.** Several technical changes are made to the sentencing code and other statutes that reference the assault statutes to now reference the equivalent assault of a child statutes.

**Amended Bill Compared to Engrossed Substitute Bill:** The Senate version is stricken and replaced with the House version. The House version is amended to provide that the previously inflicted assaults must result in bodily harm that is more than transient pain or minor temporary marks and that the "pain" inflicted must be physical.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The bill will treat child abusers more severely in some cases and will appropriately label repeat child abusers with more severe crimes in recognition of the history of abuse.

**Testimony Against:** The bill is unnecessary. The definitions are too vague. The bill will limit use of exceptional sentences.

**Witnesses:** Senator Nelson, prime sponsor (pro); Terry Amrhein, Tennis Shoe Brigade (pro, with concerns); Karen

Klein, Washington Association of Criminal Defense Lawyers  
and Washington Defender Association (con); and Fred Johnson,  
Washington Association of Prosecuting Attorneys (pro).