

HOUSE BILL REPORT

ESHB 2191

As Passed House:

January 23, 2008

Title: An act relating to limiting deferred prosecution in domestic violence cases.

Brief Description: Limiting deferred prosecution in domestic violence cases.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Lantz, Warnick, Pedersen, Williams, Moeller, Seaquist, Morrell, Kelley, Simpson and Ormsby).

Brief History:

Committee Activity:

Judiciary: 2/23/07, 2/26/07 [DPS].

Floor Activity:

Passed House: 3/12/07, 98-0.

Floor Activity:

Passed House: 1/23/08, 97-0.

Brief Summary of Engrossed Substitute Bill

- Provides that a person charged with a misdemeanor or gross misdemeanor offense that would be considered domestic violence is not eligible for deferred prosecution more than once.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Lantz, Chair; Rodne, Ranking Minority Member; Ahern, Kirby, Moeller, Pedersen and Ross.

Staff: Trudes Tango (786-7384).

Background:

Deferred prosecution

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.

A person charged with any misdemeanor or gross misdemeanor offense in a court of limited jurisdiction may be eligible for deferred prosecution. To be eligible, a person charged with an offense other than certain offenses related to criminal mistreatment must:

- allege in the petition that alcoholism, drug addiction, or mental problems caused the person to commit the offense;
- allege that treatment is necessary to prevent a reoccurrence;
- agree to pay for the expenses of diagnosis and treatment, if financially able;
- stipulate to the admissibility and sufficiency of the facts in the police report;
- acknowledge the admissibility of the stipulated facts in any trial on the charged offense; and
- waive the right to testify, to have a speedy trial, to call witnesses, to present evidence, and to have a jury trial.

The petitioner must be evaluated by an approved treatment facility, which will submit a treatment plan to the court.

If the court approves the plan and grants a deferred prosecution, the person will be ordered to undergo treatment in a two-year program. If a person fails to successfully complete the treatment program, the court must hold a hearing to determine whether to remove the person from the deferred prosecution and enter judgment on the charge. If the person successfully completes the program, the court must dismiss the charges three years after the successful completion of the program.

Persons charged with a non-felony traffic offense and persons charged with certain offenses related to criminal mistreatment are not eligible for a deferred prosecution more than once.

Domestic violence

The statutes addressing domestic violence provide a nonexclusive list of offenses that, when committed by one family or household member against another, is considered domestic violence. Some of the crimes, such as assault in the fourth degree, criminal trespass, coercion, and malicious mischief in the third degree, are misdemeanors and gross misdemeanors.

Domestic violence perpetrator treatment programs must meet minimum requirements established by the Department of Social and Health Services. Perpetrator treatment programs must focus primarily on ending the violence and holding the perpetrator accountable.

Summary of Engrossed Substitute Bill:

A person charged with a misdemeanor or gross misdemeanor that would be considered domestic violence shall not be eligible for deferred prosecution more than once.

The petitioner must state under oath that the petitioner: (a) is the family or household member of the victim; (b) is in need of domestic violence perpetrator treatment; (c) wants to correct his or her conduct to reduce the likelihood of harm to family or household members; (d) believes

that unless treatment is received, the probability of future recurrence is great; and (e) agrees to pay for the cost of diagnosis and treatment, if financially able. However, the petitioner must allege the need for counseling or other services, rather than perpetrator treatment, if: (a) the petitioner is not the primary perpetrator based on the comparative extent of injuries inflicted or threats creating fear of physical injury or the history of domestic violence between the persons involved; or (b) the victim is not or was not a spouse of the petitioner, parent of petitioner's child, or person who has or had a dating relationship with the petitioner.

The petition must also contain a case history and written assessment prepared by an approved domestic violence perpetrator treatment program provider.

The statute does not limit a prosecutor's ability to negotiate alternative dispositions.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is a result of a community task force that came together after several domestic violence tragedies in the 26th district. The task force on domestic violence included law enforcement, school officials, judges, prosecutors, a domestic violence shelter director, and others. This bill is one clear step towards addressing domestic violence. Once the perpetrator has had a deferred prosecution with treatment and then offends again, it is not appropriate to grant another deferred prosecution.

(With concerns) This bill makes sense and is appropriate to help achieve victim safety and hold abusers accountable. The bill sends the message that domestic violence will not be tolerated. It's important for the perpetrator to acknowledge the need for treatment. The requirement for a case history and written assessment will help ensure victim safety, perpetrator accountability, and prevention of future violence. However, many programs working with victims find that victims sometimes eventually attack their abusers. These victim defendants are good candidates for deferred prosecution but perpetrator treatment programs are not appropriate for them.

(Opposed) A one-size-fits-all approach will not work for everyone and may make some victims unsafe. Victims are sometimes defendants in these cases, and they need to be treated differently. Domestic violence cases can also include cases involving a parent spanking their child or can involve siblings. Courts need many different tools to deal with different domestic violence situations. The bill alienates immigrants who will not stipulate to the facts in the police reports due to fears of deportation. Courts need resources, staff, and training to address domestic violence.

Persons Testifying: (In support) Representative Lantz, prime sponsor.

(With concerns) Pamela Crone, Washington State Coalition Against Domestic Violence.

(Opposed) Kimberly Gordon, Washington Association of Criminal Defense Lawyers, and Washington Defender Association.

Persons Signed In To Testify But Not Testifying: None.