

SENATE BILL REPORT

ESHB 2191

As Reported By Senate Committee On:
Judiciary, March 30, 2007

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

Brief Description: Limiting deferred prosecution in domestic violence cases.

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

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

Committee Activity: Judiciary: 3/28/07, 3/30/07 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, Murray, Roach and Weinstein.

Staff: Dawn Noel (786-7472)

Background: Deferred prosecution: 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 a criminal mistreatment offense) 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.

For a person charged with a criminal mistreatment of a dependent person by withholding the basic necessities of life, the person charged must allege that he or she is the parent of the victim, that the wrongful conduct is a result of parenting problems for which the petitioner is

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in need of child welfare services to improve his or her parenting skills, that the petitioner wants to correct his or her conduct to reduce the likelihood of harm to his or her minor children, that in the absence of such services the petitioner may be unable to reduce the likelihood of such harm, that the petitioner has cooperated with the Department of Social and Health Services (DSHS) to develop a plan to receive appropriate child welfare services, and that he or she will pay for such services if financially able to do so. The petition must also contain a case history and service plan by DSHS. Additionally, the petitioner must stipulate to the sufficiency and admissibility of facts, acknowledge such admissibility 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.

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 traffic offense or criminal mistreatment are not eligible for a deferred prosecution more than once.

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

Domestic violence perpetrator treatment programs must meet minimum requirements established by DSHS. Perpetrator treatment programs must focus primarily on ending the violence and holding the perpetrator accountable.

Summary of Engrossed Substitute House Bill: A person charged with a misdemeanor or gross misdemeanor that would be considered domestic violence must not be eligible for deferred prosecution more than once.

The petitioner must state under oath that the petitioner: (1) is the family or household member of the victim; (2) is in need of domestic violence perpetrator treatment; (3) wants to correct his or her conduct to reduce the likelihood of harm to family or household members; (4) believes that unless treatment is received, the probability of future recurrence is great; and (5) agrees to pay for the cost of diagnosis and treatment, if financially able. The petition must also contain a case history and written assessment prepared by an approved domestic violence perpetrator treatment program provider.

However, the petitioner must allege the need for counseling or other services, rather than perpetrator treatment, if: (1) 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 (as indicated in the case history and written assessment); or (2) 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 statute does not limit a prosecutor's ability to negotiate alternative dispositions.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This bill came from a committee in my community, which is unfortunately ground zero for domestic violence. It is the scene of the terrible tragedy where the Tacoma chief of police murdered his wife and killed himself in a rage of domestic violence. Out of that has arisen a committee that does amazing work on how to identify potential domestic violence settings. The committee has suggested a bill which limits deferred prosecution for domestic violence to one time. If someone somehow manages to have that charge and works it through with the discretion of both the bench and the prosecutor, that person's prosecution can be deferred during treatment. That is fine for once, but twice, no. At that point, the person has a real problem, and needs to deal with it in the usual stiff penalty way.

CON: The cases I see are usually minor domestic violence cases of the lowest level. They often involve heightened stress situations where people are getting divorced. The problem with the substitute bill is that it creates two classes of people. We shouldn't have a situation in which we're treating people differently for the same event. It has to do with the fact that some domestic violence advocates want to treat women victims differently. We should have one system in which we have everyone get some kind of counseling or treatment. We shouldn't mandate that everyone enter a state-certified domestic violence perpetrator program. It's like treating a sinus infection with chemotherapy. We should let the people choose the provider they want. If he or she comes back, throw the book at them, but otherwise let them choose.

Persons Testifying: PRO: Representative Lantz, prime sponsor.

CON: Lisa Scott, Taking Action Against Bias in the System.