

# SENATE BILL REPORT

## ESHB 2777

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As Reported by Senate Committee On:  
Judiciary, February 26, 2010

**Title:** An act relating to modifying domestic violence provisions.

**Brief Description:** Modifying domestic violence provisions.

**Sponsors:** House Committee on Public Safety & Emergency Preparedness (originally sponsored by Representatives Goodman, O'Brien, Driscoll, Kessler, Maxwell, Finn, Hurst, Williams, Appleton, Hudgins, Kelley, Ericks, Morrell, McCoy, Seaquist, Green, Carlyle, Conway, Pearson and Simpson).

**Brief History:** Passed House: 2/12/10, 97-0.

**Committee Activity:** Judiciary: 2/23/10, 2/26/10 [DPA, w/oRec].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended.

Signed by Senators Kline, Chair; Regala, Vice Chair; Gordon, Hargrove, Kohl-Welles and Roach.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Carrell.

**Staff:** Karen Campbell (786-7448)

**Background:** A police officer is required to arrest a person 16 years of age or older if the officer has probable cause to believe that the person has assaulted a family or household member within four hours preceding arrest. The officer is required to arrest the person whom the officer believes is the primary physical aggressor. In making this determination, the officer must consider certain factors, such as the comparative extent of injuries inflicted and the history of domestic violence between the parties.

A defendant arrested or cited for an offense involving domestic violence is required to appear in person before the court and it may impose a no-contact order or other conditions of pretrial release. Upon arrest or conviction of an offense involving domestic violence, a court may enter a no-contact order prohibiting a defendant from contacting the protected party. No-contact orders can be issued without either the request or permission of the protected party.

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*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 victim of domestic violence who is 16 years of age or older may petition the court for a civil protection order, antiharassment order, or sexual assault protection order.

A court has personal jurisdiction over individuals who:

- transact business within this state;
- commit tortious acts within this state;
- own or use property in this state;
- contract to insure any person, property or risk located in this state;
- conduct an act of sexual intercourse within this state where a child may have been produced;
- live in a marital relationship within this state.

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 convictions. This number is referred to as the defendant's offender score. A defendant's prior convictions for gross misdemeanor domestic violence offenses are not counted in his or her offender score.

The standard sentencing range is presumed to be appropriate for the typical felony case. In exceptional cases, a court has the discretion to depart from the standard range and impose an exceptional sentence below or above the standard range. The SRA provides a list of factors that a court may consider in deciding whether to impose an exceptional sentence outside of the standard range. A domestic violence offense that 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 is an aggravating circumstance.

District and municipal courts may impose a maximum of two years probation following a sentence for a nonfelony offense involving domestic violence.

The Department of Social and Health Services (DSHS) certifies domestic violence perpetrator programs that: (1) accept perpetrators of domestic violence into treatment to satisfy court orders; or (2) represent themselves as treating domestic violence perpetrators. DSHS must adopt rules and enforce minimum qualifications for treatment programs.

Washington law governs who has the right to control the disposition of a person's remains. Absent a prearrangement filed by the decedent, the right to control the disposition of the remains vests in the following order:

- the surviving spouse or registered domestic partner;
- the surviving adult children;
- the surviving parents of the decedent;
- the surviving siblings of the decedent; or
- a person acting as a representative of the decedent under the signed authorization of the decedent.

**Summary of Bill (Recommended Amendments):** For the purposes of identifying the primary physical aggressor, the arresting officer must consider the history of domestic violence of each person involved, including whether the conduct was part of an ongoing

pattern of abuse. When funded, the Washington Association of Sheriffs and Police Chiefs must convene a model policy work group to address the reporting of domestic violence to law enforcement in cases where the victim is unable or unwilling to make a report in the jurisdiction where the alleged crime occurred.

At the time of the defendant's first appearance before the court for an offense involving domestic violence, the prosecutor must provide the court with the defendant's criminal history and history of no-contact and protection orders. All courts are required to develop policies and procedures to grant victims a process to modify or rescind a no-contact order. The Administrative Office of the Courts (AOC) must develop a model policy to assist the courts in implementing this requirement. The AOC must develop a pattern form for no-contact orders issued for offenses involving domestic violence and to update ex parte protection orders to include information about whether the respondent has a disability. A no-contact order issued by the court must substantially comply with the pattern form developed by the AOC. AOC must also convene a work group to address the issue of providing information to the courts regarding revocation of concealed pistol licenses upon the entry of a no-contact order.

New provisions are created to address when a court, issuing protection orders for domestic violence, sexual assault, and harassment, may exercise personal jurisdiction over a nonresident of this state. There are as follows:

- The individual is personally served with the petition in this state.
- The individual enters an appearance when a petition is filed against him or her, or files responsive documents.
- The individual's acts giving rise to the petition for a protection order occurred within this state, or occurred outside this state but is part of ongoing pattern of domestic violence that has an adverse effect on the petitioner, who is a resident of this state, or a member of his or her household.
- As a result of the individual's behavior, the petitioner or a member of his or her household has sought refuge in this state and currently resides in this state.
- The individual must communicate with or threaten the petitioner or a member of his or her household while the petitioner or family member resides in this state.

When issuing a domestic violence protection order, courts may restrain the respondent from cyber stalking or monitoring the actions, location, or communication of the victim by using wire or electronic technology. Any person 13 years of age or older may petition the court for a domestic violence protection order if the person is the victim of violence in a dating relationship and the respondent is 16 years of age or older. A petitioner who is under the age of 16 must petition the court through a parent, guardian, or next friend. Next friend is defined as any competent individual, over eighteen years of age, chosen by the minor and who is capable of pursuing the minor's stated interest in the action.

For the purpose of computing an offender's score, if the present conviction is for a felony domestic violence offense, an offender receives one point for each prior adult repetitive domestic violence offense where domestic violence was plead and proven. Repetitive domestic violence offenses include the following nonfelony offenses: assault, violation of a no-contact order or protection order, harassment, and stalking.

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 second and subsequent juvenile offense involving one of the following crimes:

1. Felony violation of a no-contact order or a protection order;
2. First and Second Degree Assault, domestic violence;
3. Felony Harassment, domestic violence;
4. Felony Stalking, domestic violence;
5. First Degree Burglary, domestic violence;
6. First and Second Degree Kidnapping, domestic violence;
7. Unlawful Imprisonment, domestic violence;
8. First and Second Degree Robbery, domestic violence;
9. First, Second, and Third Degree Assault, domestic violence; or
10. First and Second Degree Arson, domestic violence.

During sentencing for a nonfelony offense involving domestic violence, the prosecutor must provide courts of limited jurisdiction with the defendant's criminal history and history of no-contact and protection orders. The maximum period of probation that may be imposed by district and municipal courts is five years. In sentencing for an offense involving domestic violence, courts of limited jurisdiction must consider whether:

- the defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense and the offense is a response to that coercion, control, or abuse;
- 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; and
- the offense occurred within sight or sound of the victim's or the offender's minor children under the age of 18.

Under the SRA, a court may impose an exceptional sentence below the standard sentence range for offenses involving domestic violence if the defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense, and the offense is a response to that coercion, control, or abuse. It is an aggravating circumstance that permits an exceptional sentence above the standard range when the offense is part of an ongoing pattern of abuse involving a victim or multiple victims.

Any program that provides domestic violence treatment to perpetrators of domestic violence must be certified by DSHS and meet minimum standards purposes. DSHS may conduct on-site monitoring visits of treatment programs, including reviewing program and management records, to determine the program's compliance with minimum certification qualifications and rules.

**EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Amendments):** A definition of next friend is added. The personal jurisdiction requirements are narrowed to communications or threats made to a resident of this state. The person must be a resident of this state when he or she receives the threats or communications. Juvenile domestic violence gross misdemeanor offenses do not count when computing the offender score for an individual convicted of a felony domestic violence offense. Second and subsequent domestic violence felony convictions count as one point and adult domestic

violence convictions count as two points. A new section is added requiring AOC to update ex parte protection orders to include information about whether the respondent has a disability. A law enforcement officer is required to reasonably accommodate a person with special needs when serving a protection order. The section addressing changes to the right to control the disposition of human remains is deleted.

**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 on Engrossed Substitute House Bill:** PRO: Domestic violence (DV) must be dealt with more seriously in our laws. DV victims need time to heal and restructure their lives. Their fear is lessened when the DV perpetrator is in jail but that's pretty much a revolving door in our state. We are all potential DV victims; if you wake up one morning and find out your niece has been killed by a DV perpetrator, then you are a victim too. It crosses all socio-economic lines. Strongly support the prosecutors providing the court with DV perpetrators' criminal history. Judges know there are restraints that can be issued in the context of cyber-stalking. The long-arm provision recognizes the danger that victims face if they have to go back to their home state to get a protection order. The language that came out of the House as to the disposition of human remains is supported and a burdensome court process for the family is not appropriate. There is no constitutional right for a defendant to dispose of another person's remains. Electronic monitoring of defendants contained in HB 2777 would be very beneficial. A number of states have the exact same long-arm language in their statutes.

OTHER: In favor of the mitigating factor regarding whether the perpetrator of the DV is also a long-standing victim. There should be accountability at the district court level. We need to look at the beginning of the process to impact a person, that is when there is a greater possibility of intervening and having a positive impact.

**Persons Testifying:** PRO: Representative Goodman, prime sponsor; Keith Galbraith, Family Renewal Shelter; David Martin, King County Prosecuting Attorney; Claire Bradley, Kitsap County Prosecutor's Office; Rhonda Thompson; Maria Cumero; Grace Huang, WA State Coalition Against Domestic Violence.

OTHER: Travis Stearns, WA Defenders Assn.; WA Assn. of Criminal Defense Lawyers.