

# SENATE BILL REPORT

## SB 5208

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As Reported by Senate Committee On:  
Judiciary, February 17, 2009

**Title:** An act relating to punishment for domestic violence offenders.

**Brief Description:** Ensuring punishment for domestic violence offenders.

**Sponsors:** Senators Brandland, Kline, Hargrove, Stevens, Regala, Sheldon, Marr, Kohl-Welles, Tom, Kilmer and Shin; by request of Attorney General.

**Brief History:**

**Committee Activity:** Judiciary: 1/23/09, 2/17/09 [DPS-WM].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 5208 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kline, Chair; Regala, Vice Chair; McCaslin, Ranking Minority Member; Hargrove, Kohl-Welles, Roach and Tom.

**Staff:** Lidia Mori (786-7755)

**Background:** The presumptive standard sentencing range for ranked felonies is determined by the seriousness of the offense and the offender's criminal history (offender score). Misdemeanors generally are not included in offender score calculations. One exception to this general rule pertains to felony traffic offenses; in these cases, serious traffic offenses which are gross misdemeanors are included in the offender score. The rules for scoring prior convictions are contained in statute and they specify the correct number of points to be assigned for prior convictions depending on the current offense.

A court may impose a sentence above or below the standard range based upon aggravating or mitigating factors. Aggravating factors posing questions of fact must be submitted to a jury and proved beyond a reasonable doubt. RCW 9.94A.535 provides a list of factors the court may consider in deciding whether to impose an exceptional sentence. One of those aggravating factors is whether the offense 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.

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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.*

The definitions of domestic violence in RCW 10.99 and RCW 26.50 both specify that the crimes must be committed by one family or household member against another. "Family or household members" means spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

**Summary of Bill (Recommended Substitute):** For purposes of the Sentencing Reform Act, the definition of domestic violence is the same as in RCW 10.99 and RCW 26.50. In RCW 10.99, domestic violence is defined as follows, including but not limited to any of the following crimes when committed by one family or household member against another:

- (a) assault in the first degree;
- (b) assault in the second degree;
- (c) assault in the third degree;
- (d) assault in the fourth degree;
- (e) drive-by shooting;
- (f) reckless endangerment;
- (g) coercion;
- (h) burglary in the first degree;
- (i) burglary in the second degree;
- (j) criminal trespass in the first degree;
- (k) criminal trespass in the second degree;
- (l) malicious mischief in the first degree;
- (m) malicious mischief in the second degree;
- (n) malicious mischief in the third degree;
- (o) kidnapping in the first degree;
- (p) kidnapping in the second degree;
- (q) unlawful imprisonment;
- (r) violation of the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location;
- (s) rape in the first degree;
- (t) rape in the second degree;
- (u) residential burglary;
- (v) stalking; and
- (w) interference with the reporting of domestic violence.

In RCW 26.50 domestic violence means: (a) physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c)

stalking as defined in statute of one family or household member by another family or household member.

A new list of misdemeanor offenses is created and called "serious domestic violence offenses." The list includes:

- nonfelony domestic violence assault (fourth degree assault between family or household members);
- nonfelony domestic violence violation of a court order (no contact order or protection order);
- nonfelony domestic violence harassment;
- nonfelony domestic violence stalking; and
- federal, out-of-state, tribal court, military, county, or municipal conviction for an offense that would be classified as a serious domestic violence offense under this section.

When calculating a person's offender score, if the offender's present conviction is for a felony domestic violence offense, two points will be counted for each adult and juvenile prior conviction for felony violation of a no contact or protection order (which entails assault first or second degree), felony harassment domestic violence, felony stalking domestic violence, burglary first degree domestic violence, kidnapping first or second degree domestic violence, unlawful imprisonment domestic violence, robbery first or second degree domestic violence, assault second or third degree domestic violence, or arson first or second degree domestic violence. One point is counted for a prior felony violation of a no contact order (that entails two prior misdemeanor convictions for violation of a protective order) or residential burglary domestic violence. One point will be counted for each serious domestic violence offense.

Serious domestic violence convictions are not included in the offender score if the offender has spent ten years since the last date of release from confinement in the community without committing any crime that resulted in a conviction.

The list of aggravating circumstances that may be considered by a jury in order for the court to impose a sentence above the standard sentencing range is expanded to include situations where there are multiple victims of an ongoing pattern of psychological, physical, or sexual abuse manifested by multiple incidents over a prolonged period of time.

**EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Substitute):** The act takes effect August 1, 2010.

**Appropriation:** None.

**Fiscal Note:** Requested on January 23, 2009.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed, except for Section 2 which takes effect August 1, 2010.

**Staff Summary of Public Testimony on Original Bill:** PRO: The fact that a person can have committed multiple misdemeanor domestic violence (DV) offenses and they are not counted when the person commits felony DV offenses cannot be what was intended in the law. This bill allows us to take a look at a chronic violent offender with multiple victims. This type of violence tends to escalate. When it gets to the felony level, the court should be able to look at the entire criminal history in sentencing. Only a small number of offenders will see their offender score increase. DV offenders are cunning and manipulative; they know the RCWs and commit misdemeanor after misdemeanor DV offenses, victim after victim. Repeat DV offenders must be held accountable, and judges should be able to use their discretion to sentence the person based on the whole picture. This bill proposes not just scoring misdemeanors but also multiplying felonies. There is a recidivist component to every other aspect of the SRA except for DV and that's simply unfair. The bill modifies the aggravating factor so that it applies in situations with different victims. Many victims, due to the state of the law, feel not only victimized by their abuser but also by law enforcement, the courts, and prosecutors. They see abusers not receiving real sentences.

CON: Courts can already take into account prior misdemeanors. Judges have discretion to look at individual circumstances and this bill would take that away. The DV definition in statute is based on relationship status.

OTHER: Concerns are with the fiscal impact of this bill. Would like to have shelter funding and legal advocacy funding and would hate to see the fiscal note for this bill hurt those priorities. No problem with the underlying policy of the bill. The Sentencing Guidelines Commission (SGC) supports the modification to the aggravating circumstance portion of this bill. The SGC has concerns about the complex approach to multiple scoring in this bill and the fact that misdemeanor offenses are being scored. From the experience of counting misdemeanors in felony traffic offense situations, it is very cumbersome because the information sharing between the felony system and the misdemeanor system is problematic.

**Persons Testifying:** PRO: Senator Brandland, prime sponsor; Chris Johnson, Attorney General's Office; Maria Cumero, Trese Todd, Thrivers Action Group; David Martin, King County Prosecutor's Office; Jennifer Weiler, Thurston County Prosecutor's Office; Susan Adams, Crystal Judson Family Justice Center.

CON: Daron Morris, Washington Criminal Defense Lawyers, Washington Defender Association.

OTHER: Carey Morris, Washington State Coalition Against Domestic Violence; Jean Soliz Conklin, SGC.