
SUBSTITUTE HOUSE BILL 1188

State of Washington

62nd Legislature

2011 Regular Session

By House Public Safety & Emergency Preparedness (originally sponsored by Representatives Goodman, Kelley, Hurst, Kenney, Moscoso, Warnick, Roberts, Maxwell, Lias, Frockt, Rolfes, Sullivan, Carlyle, Finn, Hudgins, Kagi, Miloscia, Appleton, Ladenburg, and Fitzgibbon)

READ FIRST TIME 02/16/11.

1 AN ACT Relating to suffocation and other domestic violence
2 offenses; amending RCW 9A.36.021, 9A.04.110, and 9.94A.525; and
3 prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 9A.36.021 and 2007 c 79 s 2 are each amended to read
6 as follows:

7 (1) A person is guilty of assault in the second degree if he or
8 she, under circumstances not amounting to assault in the first degree:

9 (a) Intentionally assaults another and thereby recklessly inflicts
10 substantial bodily harm; or

11 (b) Intentionally and unlawfully causes substantial bodily harm to
12 an unborn quick child by intentionally and unlawfully inflicting any
13 injury upon the mother of such child; or

14 (c) Assaults another with a deadly weapon; or

15 (d) With intent to inflict bodily harm, administers to or causes to
16 be taken by another, poison or any other destructive or noxious
17 substance; or

18 (e) With intent to commit a felony, assaults another; or

1 (f) Knowingly inflicts bodily harm which by design causes such pain
2 or agony as to be the equivalent of that produced by torture; or

3 (g) Assaults another by strangulation or suffocation.

4 (2)(a) Except as provided in (b) of this subsection, assault in the
5 second degree is a class B felony.

6 (b) Assault in the second degree with a finding of sexual
7 motivation under RCW 9.94A.835 or 13.40.135 is a class A felony.

8 **Sec. 2.** RCW 9A.04.110 and 2007 c 79 s 3 are each amended to read
9 as follows:

10 In this title unless a different meaning plainly is required:

11 (1) "Acted" includes, where relevant, omitted to act;

12 (2) "Actor" includes, where relevant, a person failing to act;

13 (3) "Benefit" is any gain or advantage to the beneficiary,
14 including any gain or advantage to a third person pursuant to the
15 desire or consent of the beneficiary;

16 (4)(a) "Bodily injury," "physical injury," or "bodily harm" means
17 physical pain or injury, illness, or an impairment of physical
18 condition;

19 (b) "Substantial bodily harm" means bodily injury which involves a
20 temporary but substantial disfigurement, or which causes a temporary
21 but substantial loss or impairment of the function of any bodily part
22 or organ, or which causes a fracture of any bodily part;

23 (c) "Great bodily harm" means bodily injury which creates a
24 probability of death, or which causes significant serious permanent
25 disfigurement, or which causes a significant permanent loss or
26 impairment of the function of any bodily part or organ;

27 (5) "Building", in addition to its ordinary meaning, includes any
28 dwelling, fenced area, vehicle, railway car, cargo container, or any
29 other structure used for lodging of persons or for carrying on business
30 therein, or for the use, sale or deposit of goods; each unit of a
31 building consisting of two or more units separately secured or occupied
32 is a separate building;

33 (6) "Deadly weapon" means any explosive or loaded or unloaded
34 firearm, and shall include any other weapon, device, instrument,
35 article, or substance, including a "vehicle" as defined in this
36 section, which, under the circumstances in which it is used, attempted

1 to be used, or threatened to be used, is readily capable of causing
2 death or substantial bodily harm;

3 (7) "Dwelling" means any building or structure, though movable or
4 temporary, or a portion thereof, which is used or ordinarily used by a
5 person for lodging;

6 (8) "Government" includes any branch, subdivision, or agency of the
7 government of this state and any county, city, district, or other local
8 governmental unit;

9 (9) "Governmental function" includes any activity which a public
10 servant is legally authorized or permitted to undertake on behalf of a
11 government;

12 (10) "Indicted" and "indictment" include "informed against" and
13 "information", and "informed against" and "information" include
14 "indicted" and "indictment";

15 (11) "Judge" includes every judicial officer authorized alone or
16 with others, to hold or preside over a court;

17 (12) "Malice" and "maliciously" shall import an evil intent, wish,
18 or design to vex, annoy, or injure another person. Malice may be
19 inferred from an act done in (~~wilful~~) willful disregard of the rights
20 of another, or an act wrongfully done without just cause or excuse, or
21 an act or omission of duty betraying a (~~wilful~~) willful disregard of
22 social duty;

23 (13) "Officer" and "public officer" means a person holding office
24 under a city, county, or state government, or the federal government
25 who performs a public function and in so doing is vested with the
26 exercise of some sovereign power of government, and includes all
27 assistants, deputies, clerks, and employees of any public officer and
28 all persons lawfully exercising or assuming to exercise any of the
29 powers or functions of a public officer;

30 (14) "Omission" means a failure to act;

31 (15) "Peace officer" means a duly appointed city, county, or state
32 law enforcement officer;

33 (16) "Pecuniary benefit" means any gain or advantage in the form of
34 money, property, commercial interest, or anything else the primary
35 significance of which is economic gain;

36 (17) "Person", "he", and "actor" include any natural person and,
37 where relevant, a corporation, joint stock association, or an
38 unincorporated association;

1 (18) "Place of work" includes but is not limited to all the lands
2 and other real property of a farm or ranch in the case of an actor who
3 owns, operates, or is employed to work on such a farm or ranch;

4 (19) "Prison" means any place designated by law for the keeping of
5 persons held in custody under process of law, or under lawful arrest,
6 including but not limited to any state correctional institution or any
7 county or city jail;

8 (20) "Prisoner" includes any person held in custody under process
9 of law, or under lawful arrest;

10 (21) "Projectile stun gun" means an electronic device that projects
11 wired probes attached to the device that emit an electrical charge and
12 that is designed and primarily employed to incapacitate a person or
13 animal;

14 (22) "Property" means anything of value, whether tangible or
15 intangible, real or personal;

16 (23) "Public servant" means any person other than a witness who
17 presently occupies the position of or has been elected, appointed, or
18 designated to become any officer or employee of government, including
19 a legislator, judge, judicial officer, juror, and any person
20 participating as an advisor, consultant, or otherwise in performing a
21 governmental function;

22 (24) "Signature" includes any memorandum, mark, or sign made with
23 intent to authenticate any instrument or writing, or the subscription
24 of any person thereto;

25 (25) "Statute" means the Constitution or an act of the legislature
26 or initiative or referendum of this state;

27 (26) "Strangulation" means to compress a person's neck, thereby
28 obstructing the person's blood flow or ability to breathe, or doing so
29 with the intent to obstruct the person's blood flow or ability to
30 breathe;

31 (27) "Suffocation" means to intentionally obstruct a person's
32 ability to breathe by blocking or impairing intake at the nose or
33 mouth, whether by smothering or other means;

34 (28) "Threat" means to communicate, directly or indirectly the
35 intent:

36 (a) To cause bodily injury in the future to the person threatened
37 or to any other person; or

1 (b) To cause physical damage to the property of a person other than
2 the actor; or

3 (c) To subject the person threatened or any other person to
4 physical confinement or restraint; or

5 (d) To accuse any person of a crime or cause criminal charges to be
6 instituted against any person; or

7 (e) To expose a secret or publicize an asserted fact, whether true
8 or false, tending to subject any person to hatred, contempt, or
9 ridicule; or

10 (f) To reveal any information sought to be concealed by the person
11 threatened; or

12 (g) To testify or provide information or withhold testimony or
13 information with respect to another's legal claim or defense; or

14 (h) To take wrongful action as an official against anyone or
15 anything, or wrongfully withhold official action, or cause such action
16 or withholding; or

17 (i) To bring about or continue a strike, boycott, or other similar
18 collective action to obtain property which is not demanded or received
19 for the benefit of the group which the actor purports to represent; or

20 (j) To do any other act which is intended to harm substantially the
21 person threatened or another with respect to his health, safety,
22 business, financial condition, or personal relationships;

23 ~~((+28))~~ (29) "Vehicle" means a "motor vehicle" as defined in the
24 vehicle and traffic laws, any aircraft, or any vessel equipped for
25 propulsion by mechanical means or by sail;

26 ~~((+29))~~ (30) Words in the present tense shall include the future
27 tense; and in the masculine shall include the feminine and neuter
28 genders; and in the singular shall include the plural; and in the
29 plural shall include the singular.

30 **Sec. 3.** RCW 9.94A.525 and 2010 c 274 s 403 are each amended to
31 read as follows:

32 The offender score is measured on the horizontal axis of the
33 sentencing grid. The offender score rules are as follows:

34 The offender score is the sum of points accrued under this section
35 rounded down to the nearest whole number.

36 (1) A prior conviction is a conviction which exists before the date
37 of sentencing for the offense for which the offender score is being

1 computed. Convictions entered or sentenced on the same date as the
2 conviction for which the offender score is being computed shall be
3 deemed "other current offenses" within the meaning of RCW 9.94A.589.

4 (2)(a) Class A and sex prior felony convictions shall always be
5 included in the offender score.

6 (b) Class B prior felony convictions other than sex offenses shall
7 not be included in the offender score, if since the last date of
8 release from confinement (including full-time residential treatment)
9 pursuant to a felony conviction, if any, or entry of judgment and
10 sentence, the offender had spent ten consecutive years in the community
11 without committing any crime that subsequently results in a conviction.

12 (c) Except as provided in (e) of this subsection, class C prior
13 felony convictions other than sex offenses shall not be included in the
14 offender score if, since the last date of release from confinement
15 (including full-time residential treatment) pursuant to a felony
16 conviction, if any, or entry of judgment and sentence, the offender had
17 spent five consecutive years in the community without committing any
18 crime that subsequently results in a conviction.

19 (d) Except as provided in (e) of this subsection, serious traffic
20 convictions shall not be included in the offender score if, since the
21 last date of release from confinement (including full-time residential
22 treatment) pursuant to a felony conviction, if any, or entry of
23 judgment and sentence, the offender spent five years in the community
24 without committing any crime that subsequently results in a conviction.

25 (e) If the present conviction is felony driving while under the
26 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or
27 felony physical control of a vehicle while under the influence of
28 intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions
29 of felony driving while under the influence of intoxicating liquor or
30 any drug, felony physical control of a vehicle while under the
31 influence of intoxicating liquor or any drug, and serious traffic
32 offenses shall be included in the offender score if: (i) The prior
33 convictions were committed within five years since the last date of
34 release from confinement (including full-time residential treatment) or
35 entry of judgment and sentence; or (ii) the prior convictions would be
36 considered "prior offenses within ten years" as defined in RCW
37 46.61.5055.

1 (f) Prior convictions for a repetitive domestic violence offense,
2 as defined in RCW 9.94A.030, shall not be included in the offender
3 score if, since the last date of release from confinement or entry of
4 judgment and sentence, the offender had spent ten consecutive years in
5 the community without committing any crime that subsequently results in
6 a conviction.

7 (g) This subsection applies to both adult and juvenile prior
8 convictions.

9 (3) Out-of-state convictions for offenses shall be classified
10 according to the comparable offense definitions and sentences provided
11 by Washington law. Federal convictions for offenses shall be
12 classified according to the comparable offense definitions and
13 sentences provided by Washington law. If there is no clearly
14 comparable offense under Washington law or the offense is one that is
15 usually considered subject to exclusive federal jurisdiction, the
16 offense shall be scored as a class C felony equivalent if it was a
17 felony under the relevant federal statute.

18 (4) Score prior convictions for felony anticipatory offenses
19 (attempts, criminal solicitations, and criminal conspiracies) the same
20 as if they were convictions for completed offenses.

21 (5)(a) In the case of multiple prior convictions, for the purpose
22 of computing the offender score, count all convictions separately,
23 except:

24 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to
25 encompass the same criminal conduct, shall be counted as one offense,
26 the offense that yields the highest offender score. The current
27 sentencing court shall determine with respect to other prior adult
28 offenses for which sentences were served concurrently or prior juvenile
29 offenses for which sentences were served consecutively, whether those
30 offenses shall be counted as one offense or as separate offenses using
31 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and
32 if the court finds that they shall be counted as one offense, then the
33 offense that yields the highest offender score shall be used. The
34 current sentencing court may presume that such other prior offenses
35 were not the same criminal conduct from sentences imposed on separate
36 dates, or in separate counties or jurisdictions, or in separate
37 complaints, indictments, or informations;

1 (ii) In the case of multiple prior convictions for offenses
2 committed before July 1, 1986, for the purpose of computing the
3 offender score, count all adult convictions served concurrently as one
4 offense, and count all juvenile convictions entered on the same date as
5 one offense. Use the conviction for the offense that yields the
6 highest offender score.

7 (b) As used in this subsection (5), "served concurrently" means
8 that: (i) The latter sentence was imposed with specific reference to
9 the former; (ii) the concurrent relationship of the sentences was
10 judicially imposed; and (iii) the concurrent timing of the sentences
11 was not the result of a probation or parole revocation on the former
12 offense.

13 (6) If the present conviction is one of the anticipatory offenses
14 of criminal attempt, solicitation, or conspiracy, count each prior
15 conviction as if the present conviction were for a completed offense.
16 When these convictions are used as criminal history, score them the
17 same as a completed crime.

18 (7) If the present conviction is for a nonviolent offense and not
19 covered by subsection (11), (12), or (13) of this section, count one
20 point for each adult prior felony conviction and one point for each
21 juvenile prior violent felony conviction and 1/2 point for each
22 juvenile prior nonviolent felony conviction.

23 (8) If the present conviction is for a violent offense and not
24 covered in subsection (9), (10), (11), (12), or (13) of this section,
25 count two points for each prior adult and juvenile violent felony
26 conviction, one point for each prior adult nonviolent felony
27 conviction, and 1/2 point for each prior juvenile nonviolent felony
28 conviction.

29 (9) If the present conviction is for a serious violent offense,
30 count three points for prior adult and juvenile convictions for crimes
31 in this category, two points for each prior adult and juvenile violent
32 conviction (not already counted), one point for each prior adult
33 nonviolent felony conviction, and 1/2 point for each prior juvenile
34 nonviolent felony conviction.

35 (10) If the present conviction is for Burglary 1, count prior
36 convictions as in subsection (8) of this section; however count two
37 points for each prior adult Burglary 2 or residential burglary

1 conviction, and one point for each prior juvenile Burglary 2 or
2 residential burglary conviction.

3 (11) If the present conviction is for a felony traffic offense
4 count two points for each adult or juvenile prior conviction for
5 Vehicular Homicide or Vehicular Assault; for each felony offense count
6 one point for each adult and 1/2 point for each juvenile prior
7 conviction; for each serious traffic offense, other than those used for
8 an enhancement pursuant to RCW 46.61.520(2), count one point for each
9 adult and 1/2 point for each juvenile prior conviction; count one point
10 for each adult and 1/2 point for each juvenile prior conviction for
11 operation of a vessel while under the influence of intoxicating liquor
12 or any drug.

13 (12) If the present conviction is for homicide by watercraft or
14 assault by watercraft count two points for each adult or juvenile prior
15 conviction for homicide by watercraft or assault by watercraft; for
16 each felony offense count one point for each adult and 1/2 point for
17 each juvenile prior conviction; count one point for each adult and 1/2
18 point for each juvenile prior conviction for driving under the
19 influence of intoxicating liquor or any drug, actual physical control
20 of a motor vehicle while under the influence of intoxicating liquor or
21 any drug, or operation of a vessel while under the influence of
22 intoxicating liquor or any drug.

23 (13) If the present conviction is for manufacture of
24 methamphetamine count three points for each adult prior manufacture of
25 methamphetamine conviction and two points for each juvenile manufacture
26 of methamphetamine offense. If the present conviction is for a drug
27 offense and the offender has a criminal history that includes a sex
28 offense or serious violent offense, count three points for each adult
29 prior felony drug offense conviction and two points for each juvenile
30 drug offense. All other adult and juvenile felonies are scored as in
31 subsection (8) of this section if the current drug offense is violent,
32 or as in subsection (7) of this section if the current drug offense is
33 nonviolent.

34 (14) If the present conviction is for Escape from Community
35 Custody, RCW 72.09.310, count only prior escape convictions in the
36 offender score. Count adult prior escape convictions as one point and
37 juvenile prior escape convictions as 1/2 point.

1 (15) If the present conviction is for Escape 1, RCW 9A.76.110, or
2 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and
3 juvenile prior convictions as 1/2 point.

4 (16) If the present conviction is for Burglary 2 or residential
5 burglary, count priors as in subsection (7) of this section; however,
6 count two points for each adult and juvenile prior Burglary 1
7 conviction, two points for each adult prior Burglary 2 or residential
8 burglary conviction, and one point for each juvenile prior Burglary 2
9 or residential burglary conviction.

10 (17) If the present conviction is for a sex offense, count priors
11 as in subsections (7) through (11) and (13) through (16) of this
12 section; however count three points for each adult and juvenile prior
13 sex offense conviction.

14 (18) If the present conviction is for failure to register as a sex
15 offender under RCW 9A.44.130(~~((+11))~~) or 9A.44.132, count priors as in
16 subsections (7) through (11) and (13) through (16) of this section;
17 however count three points for each adult and juvenile prior sex
18 offense conviction, excluding prior convictions for failure to register
19 as a sex offender under RCW 9A.44.130(~~((+11))~~) or 9A.44.132, which shall
20 count as one point.

21 (19) If the present conviction is for an offense committed while
22 the offender was under community custody, add one point. For purposes
23 of this subsection, community custody includes community placement or
24 postrelease supervision, as defined in chapter 9.94B RCW.

25 (20) If the present conviction is for Theft of a Motor Vehicle,
26 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without
27 Permission 1, or Taking a Motor Vehicle Without Permission 2, count
28 priors as in subsections (7) through (18) of this section; however
29 count one point for prior convictions of Vehicle Prowling 2, and three
30 points for each adult and juvenile prior Theft 1 (of a motor vehicle),
31 Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a
32 motor vehicle), Possession of Stolen Property 2 (of a motor vehicle),
33 Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a
34 Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without
35 Permission 2 conviction.

36 (21) If the present conviction is for a felony domestic violence
37 offense where domestic violence as defined in RCW 9.94A.030 was plead

1 and proven, count priors as in subsections (7) through (20) of this
2 section; however, count points as follows:

3 (a) Count two points for each adult prior conviction where domestic
4 violence as defined in RCW 9.94A.030 was plead and proven after August
5 1, 2011, for the following offenses: A violation of a no-contact order
6 that is a felony offense, a violation of a protection order that is a
7 felony offense, a felony domestic violence harassment offense, a felony
8 domestic violence stalking offense, a domestic violence Burglary 1
9 offense, a domestic violence Kidnapping 1 offense, a domestic violence
10 Kidnapping 2 offense, a domestic violence unlawful imprisonment
11 offense, a domestic violence Robbery 1 offense, a domestic violence
12 Robbery 2 offense, a domestic violence Assault 1 offense, a domestic
13 violence Assault 2 offense, a domestic violence Assault 3 offense, a
14 domestic violence Arson 1 offense, or a domestic violence Arson 2
15 offense; (~~and~~)

16 (b) Count one point for each second and subsequent juvenile
17 conviction where domestic violence as defined in RCW 9.94A.030 was
18 plead and proven after August 1, 2011, for the offenses listed in (a)
19 of this subsection; and

20 (c) Count one point for each adult prior conviction for a
21 repetitive domestic violence offense as defined in RCW 9.94A.030, where
22 domestic violence as defined in RCW 9.94A.030, was plead and proven
23 after August 1, 2011.

24 (22) The fact that a prior conviction was not included in an
25 offender's offender score or criminal history at a previous sentencing
26 shall have no bearing on whether it is included in the criminal history
27 or offender score for the current offense. Prior convictions that were
28 not counted in the offender score or included in criminal history under
29 repealed or previous versions of the sentencing reform act shall be
30 included in criminal history and shall count in the offender score if
31 the current version of the sentencing reform act requires including or
32 counting those convictions. Prior convictions that were not included
33 in criminal history or in the offender score shall be included upon any
34 resentencing to ensure imposition of an accurate sentence.

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