

# HOUSE BILL REPORT

## EHB 1632

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**As Reported by House Committee On:**  
Public Safety

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

**Brief Description:** Concerning domestic violence.

**Sponsors:** Representatives Goodman, Klippert, Orwall, Hayes, Jinkins and Wylie.

**Brief History:**

**Committee Activity:**

Public Safety: 1/30/15, 2/6/15 [DP], 1/15/16, 1/20/16, 1/29/16 [DPS].

### Brief Summary of Substitute Bill

- Elevates Assault in the fourth degree involving domestic violence (DV) from a gross misdemeanor to a class C felony when a defendant has two or more prior adult convictions for certain crimes involving DV in the previous 10 years.
- Counts prior convictions of Assault of a Child or Criminal Mistreatment involving DV as two points when calculating an offender score for sentencing a conviction of a felony DV offense.
- Requires DNA collection from offenders upon conviction for certain Assault in the fourth degree offenses.
- Requires the Administrative Office of the Courts, through the Washington State Gender and Justice Commission, to convene a work group to address the issue of DV perpetrator treatment.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Griffey, Moscoso, Pettigrew and Wilson.

**Staff:** Kelly Leonard (786-7147).

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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.*

**Background:**

*Domestic Violence.* Domestic violence (DV) is defined as: (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 of one family or household member by another family or household member.

*Assault in the Fourth Degree.* A person is guilty of Assault in the fourth degree if, under circumstances not amounting to Assault in the first, second, or third degree, or Custodial Assault, he or she assaults another. Assault in the fourth degree is a gross misdemeanor.

*Repetitive Domestic Violence and Crimes of Harassment.* "Repetitive domestic violence offense" means: Assault in the fourth degree involving DV; Harassment involving DV; Stalking involving DV; a violation of a no-contact order involving DV; or a violation of a civil protection order involving DV. Crimes of harassment include: Harassment; Malicious Harassment; Telephone Harassment; Assault; Assault of a Child; Reckless Endangerment; Extortion; Coercion; Burglary; Criminal Trespass; Malicious Mischief; Kidnapping; Unlawful Imprisonment; Rape; Indecent Liberties; Rape of a Child; Child Molestation; Stalking; Cyberstalking; and violation of a temporary, permanent, or final protective order.

*Crimes Against Persons.* Crimes may be designated by statute as crimes against persons or crimes against property. If a crime is designated as a crime against persons, additional restrictions may be imposed on the offender at sentencing. Such restrictions include that the offender cannot have his or her record of conviction cleared, and may be subject to community placement or community custody.

*Sentencing and Offender Scoring.* Crimes are classified as misdemeanors, gross misdemeanors, or felonies. While there are exceptions, the classification of a crime generally determines the maximum term of confinement and/or fine for an offense. For each classification, the maximum terms of confinement and maximum fines are as follows:

<u>Classification</u>	<u>Maximum Confinement</u>	<u>Maximum Fine</u>
Misdemeanor	90 days	\$1,000
Gross Misdemeanor	364 days	\$5,000
Class C Felony	5 years	\$10,000
Class B Felony	10 years	\$20,000
Class A Felony	Life	\$50,000

When a person is convicted of a ranked felony, the Sentencing Reform Act (SRA) applies and determines a specific range of sentence within the statutory maximum. Sentences for felony offenses are determined by reference to a sentencing grid. The sentencing grid provides a standard range of months for the sentence, based on both the severity, or "seriousness level," of the offense and the convicted person's "offender score," which is based on the offender's criminal history. The offender score may vary from zero to nine plus points depending on certain factors.

For a present felony DV conviction, the following felony offenses involving DV currently count double, or two points, towards the offender score:

- felony DV Harassment;
- felony DV Stalking;
- Burglary in the first degree;
- Kidnapping in the first degree and second degree;
- Unlawful Imprisonment;
- Robbery in the first degree and second degree;
- Assault in the first degree, second degree, and third degree; and
- Arson in the first degree and second degree.

If a felony offense does not have a designated seriousness level under the SRA, the maximum period of confinement is one year regardless of the class of felony. These offenses are referred to as unranked felonies.

*Collection of DNA from Offenders.* The Washington State Patrol (WSP) operates and maintains a deoxyribonucleic acid (DNA) identification system. Biological samples must be collected from certain convicted offenders, which are then used for analysis in the DNA identification system. Biological samples are collected from any person convicted of a felony, any person who is required to register as a sex or kidnapping offender, and any person convicted of the following misdemeanors and gross misdemeanors:

- Assault in the fourth degree with Sexual Motivation;
- Communication with a Minor for Immoral Purposes;
- Custodial Sexual Misconduct in the second degree;
- Failure to Register as a sex or kidnapping offender;
- Harassment;
- Patronizing a Prostitute;
- Sexual Misconduct with a Minor in the second degree;
- Stalking; and
- violation of a Sexual Assault protection order.

*Domestic Violence Perpetrator Treatment.* Washington law provides that a court may order a defendant (or respondent) to participate in a DV perpetrator treatment program when he or she is convicted of a DV offense or is found to have committed DV for the purposes of a domestic violence protection order. State law provides minimum requirements for the goals and curriculum of DV treatment programs and directs the Department of Social and Health Services to adopt rules for the certification and regulation of individual programs. Certified DV perpetrator treatment programs are provided by private entities.

*Habeas Corpus.* "Habeas corpus" is Latin and literally means "you have the body." The superior and appellate courts may grant writs of habeas corpus in favor of parents, guardians, spouses or domestic partners, and next of kin, to enforce rights, and for the protection of children and persons who are incompetent. Under certain circumstances, the court may issue a warrant directing the sheriff to take the person and bring him or her immediately before the court. The writ is brought to the sheriff to be served on the person who is alleged to be illegally holding the person that is the subject of the writ. The sheriff must collect for official services, which includes fees charged and collected for service of writs, warrants, making returns, and actual and necessary mileage.

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## **Summary of Substitute Bill:**

*Felony Assault in the Fourth Degree.* Assault in the fourth degree involving DV is an unranked class C felony if the person has two or more prior adult convictions within 10 years for any of the following crimes involving DV:

- Assault in the first degree, second degree, and third degree;
- repetitive DV offense;
- crime of Harassment; or
- an out-of-state comparable offense.

Prior convictions elevating an Assault in the fourth degree offense to a felony are limited to those occurring after the effective date of the bill. Felony Assault in the fourth degree is limited to circumstances involving assault committed against a spouse, former spouse, domestic partner, former domestic partner, current or former dating partner, or against a person with whom the defendant has a child in common. This also applies to the prior convictions counting toward felony Assault in the fourth degree. Felony Assault in the fourth degree is categorized as a crime Against a Person.

*Offender Scoring.* For a present felony DV conviction, the following felony offenses involving DV are included among those that count double, or two points, towards an offender score: Assault of a Child in the first degree; Assault of a Child in the second degree; Assault of a Child in the third degree; Criminal Mistreatment in the first degree; and Criminal Mistreatment in the second degree.

*Collection of DNA from Offenders.* Biological samples for the purposes of DNA identification analysis must be collected from persons convicted of the following: Assault in the fourth degree involving DV; a municipal ordinance equivalent to Assault in the fourth degree involving DV; and a municipal ordinance equivalent to Assault in the fourth degree with Sexual Motivation.

When submitting a biological sample collected as a result of a conviction of an equivalent municipal ordinance to the WSP, an agency or department must include a signed affidavit from the prosecuting attorney specifying the state crime to which the municipal ordinance is equivalent.

*Domestic Violence Perpetrator Treatment.* The Administrative Office of the Courts, through the Washington State Gender and Justice Commission, must convene a work group to address the issue of DV perpetrator treatment and the role of certified treatment programs in holding DV perpetrators accountable. Certain prescribed organizations and interests must be represented in the work group membership. The work group must: review laws, regulations, and court and agency practices pertaining to DV perpetrator treatment used in civil and criminal contexts; consider the development of a universal diagnostic evaluation tool to be used by treatment providers and the Department of Corrections; and develop recommendations on changes to existing laws, regulations, and court and agency practices to improve victim safety, decrease recidivism, advance treatment outcomes, and increase the

courts' confidence in DV perpetrator treatment. The work group must report its recommendations to the Legislature no later than September 30, 2017.

*Fees for Writs of Habeas Corpus.* Sheriffs are permitted to waive fees associated with service of a writ of habeas corpus that was issued for the return of a child when the person who was granted the writ is unable to pay due to poverty.

**Substitute Bill Compared to Engrossed Bill:**

The substitute bill adds repetitive DV and crimes of harassment to the types of prior convictions elevating a present Assault in the fourth degree offense involving DV to a felony. The substitute bill limits prior convictions elevating an Assault in the fourth degree offense involving DV to a felony to those occurring after the effective date of the bill. Current and former domestic partners are added to the definition of family and household members.

The substitute bill adds provisions pertaining to the collection of biological samples from offenders. The substitute bill requires the collection of a biological sample for the purposes of DNA identification analysis from persons convicted of any of the following: Assault in the fourth degree involving DV; a municipal ordinance equivalent to Assault in the fourth degree involving DV; and a municipal ordinance equivalent to Assault in the fourth degree with Sexual Motivation.

The substitute bill requires the Administrative Office of the Courts, through the Washington State Gender and Justice Commission, to convene a work group to address the issue of DV perpetrator treatment and the role of certified treatment programs in holding DV perpetrators accountable.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) There is a significant problem with DV recidivism in Washington. Some perpetrators have seven or more prior convictions and will still serve little to no time in confinement for a present Assault in the fourth degree offense. Repeat offenders do untold damage to victims and children in the community. There are instances of very severe and violent facts involving charges of Assault in the fourth degree. Elevating a third Assault in the fourth degree with DV offense to a felony is an appropriate and necessary change to sentencing repeat offenders and protecting victims from further abuse.

Current DV perpetrator treatment is not evidence-based and is not effective. Several studies have demonstrated that the current practices of DV perpetrator treatment do not conform to

best practices for treating offenders. The courts have lost all confidence in DV perpetrator treatment programs and are no longer requiring it for offenders. The proposed substitute bill is a necessary step forward to change treatment practices.

The bill should be amended to prohibit plea bargains for defendants charged with Assault in the first or second degree when a firearm is involved. Furthermore, Assault in the fourth degree involving DV should be a felony on the second offense, not the third offense.

(Opposed) Elevating Assault in the fourth degree to a felony is not a good policy, as the underlying conduct can be trivial. There may be some extreme cases; however, the vast majority of Assault in the fourth degree charges are very minor offenses. Most of these offenses are appropriately handled in municipal and district court. Increasing it to a felony creates a burden on the system where it is not set up for it.

The proposed substitute bill confuses the purpose of DV perpetrator treatment and raises serious safety concerns. Domestic violence perpetrator treatment does not just address recidivism, but also victim safety and family safety. Treatment providers already provide treatment using cognitive behavioral approaches to therapy, even though they have not been empirically proven to be evidence-based.

(Other) The proposed substitute bill is an important step forward in protecting victims of DV, particularly with respect to the change in making third instances of Assault in the fourth degree a felony. However, the provisions on DV perpetrator treatment in the proposed substitute bill should be changed.

Domestic violence perpetrator treatment providers are an important part of the system and serve to increase victim safety. Domestic violence is a cycle perpetuated over generations, and treatment providers are on the frontlines to stop current and future abuse. The state should make changes in order to increase treatment utilization and improve outcomes, but it should be done in a thoughtful way. Practitioners and providers should be involved in developing new forms, intake practices, and diagnostic tools.

There is strong disagreement among experts regarding what constitutes evidence-based practices in DV perpetrator treatment. Recidivism is not the only measure for effectiveness. The state should prioritize practices to enhance victim safety and autonomy rather than overly emphasize recidivism. The provisions in the proposed substitute bill on evidence-based treatment should be removed. Instead, the bill should include the establishment of a work group to review current laws, regulations, and practices in addressing DV perpetrator accountability.

The proposed substitute bill adds equivalent municipal ordinances for certain state crimes with respect to requirements to collect biological samples from offenders upon conviction for DNA testing. This would be very difficult for the WSP to administer.

**Persons Testifying:** (In support) David Martin, King County Prosecuting Attorneys Office; and Jolaine Coles, Washington State Coalition Against Domestic Violence.

(Opposed) James Laukkonen, Washington Association of Criminal Defense Lawyers and Washington Defender Association; and Robert Johnson, Northwest Association of Domestic Violence Treatment Providers.

(Other) Grace Huang, Washington State Coalition Against Domestic Violence; Monica Alexander, Washington State Patrol; and Melanie Smith, Wellspring Family Services.

**Persons Signed In To Testify But Not Testifying:** None.