

# HOUSE BILL REPORT

## SB 5605

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### As Passed House - Amended:

March 4, 2016

**Title:** An act relating to arrest of sixteen and seventeen year olds for domestic violence assault.

**Brief Description:** Concerning the arrest of sixteen and seventeen year olds for domestic violence assault.

**Sponsors:** Senators Darneille, Jayapal, Kohl-Welles and McAuliffe.

### Brief History:

#### Committee Activity:

Early Learning & Human Services: 2/23/16, 2/24/16, 2/26/16 [DPA].

#### Floor Activity:

Passed House - Amended: 3/4/16, 55-42.

### Brief Summary of Bill (As Amended by House)

- Increases the age of mandatory arrest from 16 to 18 years old and older for domestic violence assault.
- Requires that police officers arrest 16 and 17 year olds for domestic violence assault when the assault occurred within the last four hours and the parent or guardian requests an arrest.

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## HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

**Majority Report:** Do pass as amended. Signed by 8 members: Representatives Kagi, Chair; Senn, Vice Chair; Walsh, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Kilduff, Ortiz-Self, Sawyer and Walkinshaw.

**Minority Report:** Do not pass. Signed by 1 member: Representative McCaslin.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Hawkins.

**Staff:** Luke Wickham (786-7146).

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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:**

### Arrest Without a Warrant.

A police officer that has probable cause to believe a person has committed a felony has the authority to arrest the person without a warrant. Generally, officers may only arrest persons without a warrant for committing misdemeanor or gross misdemeanor offenses when the offense is committed in the presence of the officer.

### Mandatory Arrest for Domestic Violence.

The Legislature enacted legislation in 1984 requiring that officers arrest a person when the officer has probable cause to believe that person has committed domestic violence assault within the last four hours. In 1985 the age of mandatory arrest for domestic violence was increased to age 18 and older. In 1995 the age of mandatory arrest was reduced to age 16 and older.

A police officer must arrest and take into custody a person who is 16 years of age or older when the officer has probable cause to believe that the individual assaulted a family or household member within the preceding four hours and the officer believes:

- a felony assault occurred;
- an assault occurred resulting in bodily injury to the victim; or
- any physical action occurred that was intended to cause another person to reasonably fear imminent serious bodily harm or death.

In these circumstances, the officer shall arrest the person whom the officer believes to be the primary physical aggressor.

### Assault.

Courts in Washington apply a common law definition of assault, which includes:

- an attempt, with unlawful force, to inflict bodily injury upon another;
- unlawful touching with criminal intent; and
- putting another in apprehension of harm whether or not the actor intends to inflict or is capable of inflicting that harm.

Touching may be unlawful because it was not legally consented to nor otherwise privileged, and was either harmful or offensive.

There are four categories of assault ranging from Assault in the first degree, a class A felony, to Assault in the fourth degree, a gross misdemeanor.

### Domestic Violence.

Certain crimes, including Assault, are identified as domestic violence crimes when committed by one family or household member against another. Family or household members include: spouses; former spouses; persons who have a child in common; adults related by blood or marriage; adults who are residing together or who have resided together in the past; persons 16 years of age or older who are residing together or who have resided together in the past who have or have 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 Amended Bill:**

The age of mandatory arrest is increased from 16 to 18 years of age for individuals whom an officer has probable cause to believe assaulted a family or household member in the preceding four hours.

A police officer must arrest a 16 or 17 year old who has assaulted a family member in the preceding four hours and the parent or guardian requests an arrest.

A juvenile detention facility must book into detention persons under age 18 brought to the detention facility pursuant to a domestic violence assault arrest.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended 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) This bill is identical to a bill that passed the House of Representatives in 2014 and died in the Senate. This law was enacted in the 1980s and then was extended to 16 and 17 year olds in the 1990s. Now 16 and 17 year olds are required to be arrested after a domestic violence assault. Under the existing law, those juveniles cannot be eligible for diversion. We are doing great things to keep juveniles out of detention and providing services. By changing the "must" to "may" regarding arrest of 16 and 17 year olds, juveniles will then be able to participate in diversion programs. This bill recognizes that juveniles do not have the same ability to regulate impulse control as adults. These laws that were passed in the 1990s require scrutiny, especially those related to juvenile justice.

(Opposed) King County has one of the lowest uses of juvenile detention in the country. This bill is an easy way out to deal with an incredibly complicated and dangerous situation that occurs every day. This bill says to parents when they are desperate that they must look elsewhere because law enforcement will not help you. Parents do not call 911 because they are trying to scare their children straight, they call because they are actually scared. There will be unintended consequences with this bill. This bill may increase racial disproportionality because you are giving police greater discretion. This bill may also increase criminal misbehavior. If we do not give these children and families services, the issues that these families have will get worse. Sixteen and 17 year olds arrested for misdemeanor assault are not treated in the adult justice system. Many of these youth are not even charged with an offense in King County; they are referred to restorative justice programs. This is a blunt instrument to deal with a complicated situation. In King County, these youth are often not booked immediately into detention. There needs to be a time out, but the youth does not need to be in detention. There needs to be more options for law enforcement. It would be better to give parents the discretion regarding whether or not to arrest these youth.

The Step Up program provides services to families where violence exists. It is important to look at what happens with youth aged 15 and younger where there is discretion for law enforcement. When law enforcement responds to domestic violence assault calls for these youth, they will tell parents that they cannot do anything until they turn 16. If an arrest occurs and it is an inappropriate arrest, the case would be dismissed. There are youth that punch holes in walls, throw knives, and harm relatives including breaking bones of grandparents. These actions often inflict physical and emotional trauma on relatives. The police are there to keep us safe. Sometimes there is no other choice to keep families safe. Families deserve options and youth deserve consequences, sometimes including detention.

Through work on the Step Up program, over 1,000 interviews were conducted with families and youth that assaulted family members. There are younger siblings who are directly affected by family violence even if they are not the direct victims of family violence. Just imagine what it would be like to listen to your mother's screams. These are the hidden victims of family violence. Our understanding of family violence involving children is basic and naïve. This bill would take us back to an outdated mentality regarding domestic violence.

Police officers are doing the best they can. Police training is important in this matter. There is a detention criteria in King County and most counties, which excludes domestic violence assault when a youth is under the age of 16. This could result in a change in detention criteria not to accept 16 and 17 year olds. When parents call the police, this may not be the most serious incident, but it is often part of a series of incidents.

(Other) Law enforcement supports the expanded discretion regarding domestic violence arrest, with an amendment that removes the language regarding discretionary arrest of 16 and 17 year olds for domestic violence assault. Current law already allows discretionary arrest of persons for domestic violence assault, and by adding additional language regarding the discretionary arrest of 16 and 17 year olds, an inference could be made that law enforcement does not have discretion to arrest children younger than age 16.

It is not reasonable for every 16 and 17 year old to be arrested for domestic violence assault, and this bill would increase the flexibility to respond appropriately.

**Persons Testifying:** (In support) Senator Darneille, prime sponsor.

(Opposed) Jimmy Hung, King County Prosecutor's Office; and Lily Anderson and Greg Routh, King County Step Up Program.

(Other) James McMahan, Washington Association of Sheriffs and Police Chiefs.

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