

# SENATE BILL REPORT

## EHB 1632

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As Reported by Senate Committee On:  
Law & Justice, March 31, 2015

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

**Brief Description:** Concerning domestic violence.

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

**Brief History:** Passed House: 3/02/15, 97-0.

**Committee Activity:** Law & Justice: 3/16/15, 3/31/15 [DPA].

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### SENATE COMMITTEE ON LAW & JUSTICE

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

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille, Kohl-Welles, Pearson and Roach.

**Staff:** Lindsay Erickson (786-7465)

**Background:** Offender Score for Felonies Involving Domestic Violence. The sentence imposed for a felony crime will depend on the seriousness level of the offense and the defendant's offender score. The offender score may vary from zero to nine plus points depending on five factors: (1) the number of prior criminal convictions or juvenile dispositions; (2) the relationship between any prior offenses and the current offense of conviction; (3) the presence of other current convictions; (4) the offender's community custody status at the time the crime was committed; and (5) the length of the offender's crime-free behavior between offenses.

For a present felony domestic violence conviction, adult prior convictions for the following felony offenses involving domestic violence currently count double, or two points, toward the offender score:

- felony violation of a no-contact order;
- felony violation of a protection order;
- felony domestic violence harassment;
- felony domestic violence stalking;
- burglary in the first degree;
- kidnapping in the first degree;

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- kidnapping in the second degree;
- unlawful imprisonment;
- robbery in the first degree;
- robbery in the second degree;
- assault in the first degree;
- assault in the second degree;
- assault in the third degree;
- arson in the first degree; and
- arson in the second degree.

Domestic violence is defined as (1) physical harm, bodily injury, assault or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (2) sexual assault of one family or household member by another; or (3) stalking of one family or household member by another family or household member.

Crimes Against Persons. A crime may be designated in statute as a crime against a person. If so designated, at sentencing for a crime against a person, the court may order up to one year of community custody if the defendant is sentenced to one year or less in confinement and the court must order one year of community custody if the defendant is sentenced to the Department of Corrections. Convictions for crimes against persons cannot be vacated from an offender's record.

Assault in the Fourth Degree. Assault in the fourth degree is a gross misdemeanor, punishable by up to 364 days in jail and a \$5,000 fine.

Fees for Writs of 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 the rights, and for the protection of children and persons who are incompetent. Whenever it appears that the person that is the subject of the writ will be carried out of the jurisdiction of the court, or will suffer irreparable injury, before compliance with the writ may be enforced, the court may also issue a warrant directing the sheriff to take the person that is the subject of the writ and bring the person immediately before the court.

Once issued by the court, the writ and any warrant is brought to the sheriff to be served by delivery on the person who is alleged to be illegally holding the person that is the subject of the writ. The sheriff is also tasked with filing the return. The fees that the sheriff must collect for official services are set forth in statute. These include fees that must be charged and collected for service of writs, warrants, making returns, and actual and necessary mileage. There are also fees specified in statute with respect to what courts must charge for various filings. The chapter governing writs of habeas corpus includes a specific provision allowing an impoverished person seeking a writ of habeas corpus, but unable to pay the fees, to seek a waiver of court fees and permitting, but not requiring, the court to waive such fees.

**Summary of Bill (Recommended Amendments):** Offender Score for Felonies Involving Domestic Violence. For a present felony domestic violence conviction, the following felony offenses involving domestic violence are included among those that currently count double, or two points, toward the 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; or
- criminal mistreatment in the second degree.

Assault in the Fourth Degree. Assault in the fourth degree involving domestic violence is a class C felony, punishable by up to five years in prison and a \$10,000 fine, if the person has two or more prior adult convictions within ten years for any of the following crimes involving domestic violence:

- assault in the first degree;
- assault in the second degree;
- assault in the third degree; or
- assault in the fourth degree.

Felony assault in the fourth degree involving domestic violence is categorized as a level 4 offense and a crime against a person.

Felony assault in the fourth degree is limited to circumstances involving assault committed against the following persons:

- a spouse;
- a former spouse;
- persons who have a child in common;
- persons 16 years of age or older who are presently residing together or who have resided together in the past and who have or had a dating relationship; and
- persons 16 years of age or older with whom a person 16 years of age or older has or had a dating relationship.

This limitation also applies to the prior convictions that count toward felony assault in the fourth degree.

Fees for Writs of Habeas Corpus. Sheriffs are permitted, but not required, 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, by reason of poverty, unable to pay the cost of service.

**EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (Recommended Amendments):** Changes the unranked offense of assault in the fourth degree where domestic violence was pleaded and proven to a level 4 offense.

**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 House Bill:** PRO: The core of this bill deals with repeat domestic violence. The highest-risk offenders for committing any violent crime are domestic violence offenders. If someone has been convicted of assault 4 involving domestic violence twice, the third time should be a felony. These offenses tend to be repeated against the same victims. These offenders are dangerous and we want to hold them accountable. The House limited the meaning of domestic violence to mean offenses committed against intimate partners. As the bill is currently drafted, the new offense of felony assault 4 is unranked, which means it will have a 0–12 months range no matter how many times the crime has been committed previously. So if this bill is hoping to address repeat behavior, keeping this new offense as an unranked felony does not make sense.

CON: Assault 4 involving domestic violence should not be a felony on the third conviction, and these crimes should not be in superior court. Assault 4 crimes take very little evidence to prosecute and are often cases that prosecutors reduce due to insufficient evidence for more serious assault charges. Not all assault 4 domestic violence charges are the kinds of crimes that should be turned into felonies. If the committee were to make this a ranked offense, that would have a significant effect with collateral consequences for the defendant: the defendant would have a felony conviction, be subject to the Department of Corrections supervision, and a point would be added to the defendant's offender score.

**Persons Testifying:** PRO: Representative Goodman, prime sponsor; Tom McBride, WA Assn. of Prosecuting Attorneys.

CON: Amy Muth, WA Assn. of Criminal Defense Lawyers, WA Defender Assn.

**Persons Signed in to Testify But Not Testifying:** No one.