

SENATE BILL REPORT

SB 5605

As Amended by House, 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: Human Services, Mental Health & Housing: 2/02/15, 2/17/15 [DP-WM, DNP].

Passed Senate: 2/11/16, 40-9.

Passed House: 3/04/16, 55-42.

SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators O'Ban, Chair; Miloscia, Vice Chair; Darneille, Ranking Minority Member; Hargrove.

Minority Report: Do not pass.

Signed by Senator Padden.

Staff: Lindsay Erickson (786-7465)

Background: A police officer must arrest and take into custody certain individuals without a warrant when the officer has probable cause to believe that the person committed specific crimes. These specific crimes include violations of a protection order, restraining order, no-contact order or foreign protection order, and persons age 16 years or older who assaulted a family or household member.

Mandatory arrest with probable cause for domestic violence assault was enacted by the Legislature in 1984 in an attempt to overcome law enforcement's traditional reluctance to arrest in cases of assaults involving domestic partners. The age of mandatory arrest was changed from age 18 to age 16 in 1995.

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.

Assault. There are four assault categories ranging from first through fourth degree assault. First through third degree assault are felony offenses, while fourth degree assault is a gross misdemeanor. Fourth degree assault is defined as an assault not amounting to first degree, second degree, third degree, or custodial assault. Because Washington's criminal code does not define assault, the courts apply a common law definition. That common law definition includes the following:

- 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.

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

Domestic Violence. Certain crimes, including assault, are designated 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 resided together in the past, persons 16 years of age or older who are residing together or who resided together in the past who have or 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: The age of mandatory arrest for domestic violence assault is increased from age 16 to age 18.

Police officers may arrest individuals who are age 16 or 17 and within the preceding four hours assaulted a family or household member and the officer believes a felony assault occurred, an assault occurred resulting in bodily injury, or that any physical action which was intended to cause another person to reasonably fear imminent bodily injury or death occurred.

In making the determination to arrest 16 or 17-year-olds, police officers must consider the intent to protect victims of domestic violence, the extent of injuries inflicted or serious threats creating fear of physical injury, and the history of domestic violence or stalking of each person involved, including whether the conduct was part of an ongoing pattern of abuse.

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: PRO: This bill allows youth who are suspected of committing non-felonious assault to be considered for a diversion program. Seventy-two percent of the juveniles currently brought into the juvenile system are utilizing some form of

the diversion program. This bill would allow a broader group to utilize this program, and provides a better alternative for a youth than incarceration. This bill uses the same language from a bill offered last session, which was supported by the Washington Association of Prosecuting Attorneys and the Sentencing Guidelines Commission.

Persons Testifying: PRO: Senator Darneille, Prime Sponsor.

House Amendment(s):

- Removes language providing officer discretion regarding whether to arrest 16 and 17 year olds for assaulting family or household members;
- Specifies that police officers shall, at the request of a parent or guardian, arrest a 16 or 17 year old if the officer has probable cause to believe the child has committed a domestic violence assault in the last four hours;
- Specifies that the requirement for officers to make a domestic violence assault arrest of 16 and 17 year olds based on a parent's request does not remove a police officer's existing authority to make an arrest; and
- Requires juvenile detention facilities to book into detention youth brought to that detention facility pursuant to a domestic violence assault arrest.