

FINAL BILL REPORT

E2SHB 1163

C 272 L 17
Synopsis as Enacted

Brief Description: Concerning domestic violence.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Goodman, Hayes, Orwall, Appleton, Klippert, Pellicciotti, Pettigrew, Chapman, Kilduff, Bergquist, Stanford and Kloba).

House Committee on Public Safety
House Committee on Appropriations
Senate Committee on Law & Justice
Senate Committee on Ways & Means

Background:

Domestic Violence. A crime of domestic violence (DV) is a crime committed by one family or household member against another. As defined in statute "family or household members" include current or former spouses or domestic partners, persons with a child in common, adults who are related by blood or marriage, adults who currently live together or have lived together in the past, persons 16 or older who have had a dating relationship, and persons who have a legal or biological parent-child relationship, including stepparents and stepchildren, and grandparents and grandchildren.

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 Offenses and Crimes of Harassment. A "repetitive domestic violence offense" includes any non-felony DV offense of Assault, Harassment, Stalking, or violation of a no-contact order or protection order. 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; Residential Burglary; Unlawful Discharge of a Laser; and violation of a protective order.

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.

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 he or she may be subject to community placement or community custody.

Sentencing and Offender Scoring. Crimes are classified as misdemeanors, gross misdemeanors, or felonies. The classification of a crime generally determines the maximum term of confinement and/or fine for an offense. For each classification, the statutory 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 sentence range within the statutory maximum. The SRA's 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 seriousness level of the offense is set in statute, and ranges from level I on the low end to level XVI on the high end. The offender score may vary from zero to nine plus points depending on certain factors.

When determining the sentence for a present felony DV conviction, the following felony offenses involving DV count as two points toward the offender score:

- felony violation of a no-contact or protection order;
- felony Harassment;
- felony 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.

Collection of DNA from Offenders. The Washington State Patrol operates and maintains a deoxyribonucleic acid (DNA) identification system. Biological samples must be collected from certain 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.

Habeas Corpus. 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. The writ is directed to the sheriff to be served on the person who is alleged to be illegally holding the person who is the subject of the writ. In some circumstances, the court may also issue a warrant directing the sheriff to take the person that is the subject of the writ and bring that person immediately before the court.

The court may waive the court fees and costs associated with asserting the right to a writ of habeas corpus if the court is satisfied that, by reason of poverty, the person is unable to pay. The sheriff is required to collect fees for its official services, including fees charged and collected for service of writs, warrants, making returns, and actual and necessary mileage.

Domestic Violence Perpetrator Treatment. A court may order a defendant or respondent to participate in a DV perpetrator treatment program upon conviction of a DV offense or in relation to a DV 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.

Vacated Convictions. In certain circumstances, a person's record of conviction may be vacated by a sentencing judge. The judge may vacate a conviction by permitting the applicant to withdraw his or her guilty plea and enter a not guilty plea, or set aside the guilty verdict and dismiss the information, indictment, complaint or citation against the applicant, and vacate the judgment and sentence. Once the court vacates a record of conviction, the offense is no longer included in the person's criminal history for sentencing and other purposes; however, vacation of the record of conviction does not prevent the use of the prior conviction in a later criminal prosecution.

Summary:

Felony Assault in the Fourth Degree. Assault in the fourth degree where DV is pleaded and proven is a class C felony ranked at seriousness level IV 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, or 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 act. In addition, the present and prior offenses supporting a conviction for felony Assault in the fourth degree must have been committed against a spouse, former spouse, domestic partner, former domestic partner, current or former dating partner, or a person with whom the defendant has a child in common.

Felony Assault in the fourth degree is categorized as a crime against persons.

Offender Scoring. When determining the sentence for a present felony DV conviction, the following felony offenses involving DV are included among those that count as 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 Assault in the fourth degree involving DV.

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.

Work Groups. 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 identified organizations and interest groups 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 Washington State Gender and Justice Commission must also collaborate with the Washington State Coalition Against Domestic Violence and the Washington State University Criminal Justice Program to convene a work group composed of representatives from specified entities and interests to study how and when risk assessment can best be used to improve the response to DV. The work group must research and make recommendations regarding: how to best develop and use risk assessment in DV response; effective strategies for incorporating DV risk assessment in DV response to reduce deaths, serious injuries, and recidivism related to DV; promoting access to DV risk assessment for criminal justice system actors; examining how risk assessment could be used in bail determinations and protection order hearings, as an alternative to DV mandatory arrest, and as a means to improve prosecution efforts; examining how offender risk, needs, and responsibility could be used in determining eligibility for diversion, sentencing alternatives, and treatment options; how victim risk, needs, and responsibility could be used in improving DV response; and ways to encourage private sector collaboration.

Each work group must operate within existing funds and report its recommendations no later than June 30, 2018.

Vacated Convictions. A vacated misdemeanor or gross misdemeanor DV conviction cannot be used in a later criminal prosecution, unless the conviction was for violation of the provisions of a protection, restraining, or no-contact order, or stalking. In addition, the vacated conviction is not considered a conviction for the purposes of federal laws related to firearm restrictions.

Votes on Final Passage:

House	93	5	
Senate	49	0	(Senate amended)
House	94	1	(House concurred)

Effective: July 23, 2017