

HOUSE BILL REPORT

E2SHB 1163

As Passed Legislature

Title: An act relating to domestic violence.

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).

Brief History:

Committee Activity:

Public Safety: 1/16/17, 1/19/17 [DPS];

Appropriations: 2/8/17, 2/15/17 [DP2S(w/o sub PS)].

Floor Activity:

Passed House: 3/1/17, 93-5.

Senate Amended.

Passed Senate: 4/11/17, 49-0.

House Concurred.

Passed House: 4/17/17, 94-1.

Passed Legislature.

Brief Summary of Engrossed Second 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 adult convictions for Assault of a Child or Criminal Mistreatment involving DV as two points when calculating an offender score for sentencing pursuant to a felony DV conviction.
- Requires deoxyribonucleic acid (DNA) collection from offenders upon conviction for an Assault in the fourth degree offense when DV was pleaded and proven.
- Provides that sheriffs may waive fees associated with service of writs of habeas corpus issued for return of a child in circumstances in which the person granted the writ is unable to pay due to poverty.

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.

- Requires the Washington State Gender and Justice Commission to convene work groups to address the issues of DV perpetrator treatment and DV risk assessment.
- Provides that, with some exceptions, a vacated misdemeanor or gross misdemeanor DV conviction cannot be used in a later criminal prosecution, and states that the vacated conviction is not considered a conviction for the purposes of federal laws related to firearm restrictions.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Chapman, Griffey, Holy, Orwall, Pettigrew and Van Werven.

Staff: Omeara Harrington (786-7136).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Public Safety. Signed by 20 members: Representatives Ormsby, Chair; Robinson, Vice Chair; MacEwen, Assistant Ranking Minority Member; Bergquist, Cody, Fitzgibbon, Hansen, Hudgins, Jinkins, Kagi, Lytton, Pettigrew, Pollet, Sawyer, Senn, Springer, Stanford, Sullivan, Tharinger and Wilcox.

Minority Report: Do not pass. Signed by 10 members: Representatives Buys, Caldier, Haler, Harris, Manweller, Nealey, Schmick, Taylor, Vick and Volz.

Minority Report: Without recommendation. Signed by 2 members: Representatives Stokesbary, Assistant Ranking Minority Member; Condotta.

Staff: Rachelle Harris (786-7137).

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 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.

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. 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 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.

For a present felony DV conviction, the following felony offenses involving DV currently 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. 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 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 must collect fees for official services, which includes fees charged and collected for service of writs, warrants, making returns, and actual and necessary mileage.

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.

Vacated Convictions. In certain circumstances authorized in statute, 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 of Engrossed Second Substitute Bill:

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 bill. In addition, 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 persons.

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 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, it is stated that the vacated conviction is not considered a conviction for the purposes of federal laws related to firearm restrictions.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Public Safety):

(In support) The main focus of this bill is on repeat offenders; those who repeatedly assault the same victim or who have serial victims. Our current approach is not effective, and existing penalties allow offenders to continue. Those who repeatedly assault a partner are statistically the most dangerous to communities and should be treated differently. Studies have found that DV is the leading cause of recidivism, and repeat offenders commonly commit other violent offenses. Domestic violence is also connected with police injuries and deaths. Washington is out of step with the vast majority of states that make multiple DV assaults a felony.

Having a sentencing provision is not enough. There are also number of issues with perpetrator treatment. This bill addresses both aspects.

(Opposed) This is not an issue to be taken lightly, but there are some concerns. The increase in seriousness is abrupt, and risks a situation of someone who does not have a pattern of lifelong DV ending up in felony court. Individual facts should be taken into account rather than automatically raising the offense to a class C felony. The definition of DV is not consistent with other definitions in statute, which is problematic. The bill also invokes a mandatory DNA fee, which increases costs to defendants and should be waivable. The risk assessment work group is a good idea, but the makeup of the group is one sided and should include a second defense representative. The report should include evidence-based programs.

Staff Summary of Public Testimony (Appropriations):

(In support) This bill focuses on repeat violent offenders, who are outliers in the system that need to be dealt with in a different way. There is a small number of these offenders, but they are very problematic for our communities because they are repeatedly violent individuals. Thirty-seven other states have similar laws as those enacted by this bill. New York has seen such success with this kind of legislation that they have even gone back and enhanced the penalties further. Based on an analysis of 1,679 referrals from two years of misdemeanor district court data, only about 15 offenders would have qualified for this kind of offense during that time. There is no reason to expect an increase in trial rates related to the increase in penalties established under the bill.

(Opposed) None.

(Other) The courts support the bill but would request that the language requiring the Administrative Office of the Courts to follow through with the bill's requirements within existing resources be removed. The courts need help in finding additional resources to help do this important work.

Persons Testifying (Public Safety): (In support) Representative Goodman, prime sponsor; David Martin, King County Prosecuting Attorney's Office; and Ken Thomas, Kent Police Department.

(Opposed) Brad Meryhew, Washington Association of Criminal Defense Lawyers.

Persons Testifying (Appropriations): (In support) David Martin, King County Prosecuting Attorney's Office and Washington Association of Prosecuting Attorneys.

(Other) Brady Horenstein, Administrative Office of the Courts

Persons Signed In To Testify But Not Testifying (Public Safety): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.