
Public Safety Committee

HB 2619

Brief Description: Increasing penalties for certain repeat offenders who engage in lurid criminal contact.

Sponsors: Representatives Irwin, Eslick, Orwall, Pellicciotti, Volz, Walsh, Griffey, Hayes, Johnson, Van Werven, Stambaugh, Wylie, Muri, McDonald and Young.

Brief Summary of Bill

- Elevates Assault in the fourth degree involving sexual motivation from a gross misdemeanor to a class C felony and a level III offense when a defendant has two or more prior convictions for certain crimes involving sexual motivation within 10 years.
- Makes the crime of Indecent Exposure a class C felony when a defendant has a prior conviction under a comparable municipal or out-of-state offense.
- Makes felony Indecent Exposure a level II offense in certain circumstances.

Hearing Date: 1/29/18

Staff: Kelly Leonard (786-7147).

Background:

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.

Indecent Exposure. A person is guilty of Indecent Exposure if he or she intentionally makes any open and obscene exposure of his or her person or the person of another knowing that such conduct is likely to cause reasonable affront or alarm. The act of breastfeeding or expressing breast milk is not Indecent Exposure.

The classification of Indecent Exposure varies as follows:

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.

- class C felony if the person has a prior conviction of Indecent Exposure or of a sex offense;
- gross misdemeanor on the first offense if the person exposes himself or herself to a person under the age of 14 years; or
- misdemeanor in all other circumstances.

Felony Indecent Exposure when committed against a person under the age of 14 years is a level IV offense under the Sentencing Reform Act (SRA). Other circumstances for felony convictions of Indecent Exposure are unranked offenses.

Sentencing. Crimes are classified as misdemeanors, gross misdemeanors, or felonies. While there are exceptions, the classification of a crime generally determines the maximum term of confinement and/or fine for an offense. For each classification, the 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 felony, the SRA applies and determines a specific range of sentence within the statutory maximum. Under the SRA, 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. If a felony does not have a seriousness level under the SRA, then the maximum term of confinement is one year.

Sexual Motivation. A person commits a crime with Sexual Motivation if one of the purposes for which he or she committed his or her crime was sexual gratification. In a prosecution of any offense (other than a sex offense), the prosecutor must file a special allegation of Sexual Motivation if evidence exists that would justify a finding by a reasonable and objective factfinder. A court is required to add time to an offender's standard sentence range if he or she is convicted of Sexual Motivation, as follows:

- 24 months for a class A felony;
- 18 months for a class B felony; and
- 12 months for a class C felony.

The time of the enhancement is doubled if the person was subject to the Sexual Motivation enhancement in a previous conviction. A Sexual Motivation enhancement is mandatory, is served in total confinement, and runs consecutively to all other sentencing provisions.

A finding of Sexual Motivation for any felony also elevates the offense to a sex offense, which can trigger sex offender registration and community supervision requirements.

A finding of Sexual Motivation for a gross misdemeanor or misdemeanor does not have the same consequences as for a felony conviction; however, a conviction of Assault in the fourth degree with a finding of Sexual Motivation currently requires an offender to submit a biological sample for DNA analysis and entry into CODIS.

Summary of Bill:

Felony Assault in the Fourth Degree with a Finding of Sexual Motivation. Assault in the fourth degree where Sexual Motivation is pleaded and proven is a class C felony ranked at a seriousness level III if the person has two or more prior convictions within 10 years for any of the following crimes where Sexual Motivation was pleaded and proven:

- Assault in the fourth degree;
- Assault in the third degree;
- Assault in the second degree;
- Assault in the first degree;
- A municipal offense comparable to any of the above offenses; or
- An out-of-state offense comparable to any of the above offenses.

Indecent Exposure. Indecent Exposure is a class C felony if the person has previously been convicted of a municipal ordinance or out-of-state offense comparable to Indecent Exposure under state law.

Felony Indecent Exposure is a seriousness level II offense for circumstances where the present offense involves a victim 14 years of age or older.

Appropriation: None.

Fiscal Note: Requested on January 24, 2018.

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