

HOUSE BILL REPORT

SSB 5618

As Reported by House Committee On:
Early Learning & Human Services

Title: An act relating to arrest of sixteen and seventeen year olds for domestic violence assault.

Brief Description: Concerning arrest of sixteen and seventeen year olds for domestic violence assault.

Sponsors: Senate Committee on Human Services, Mental Health & Housing (originally sponsored by Senators Darneille and Keiser).

Brief History:

Committee Activity:

Early Learning & Human Services: 3/14/17, 3/29/17 [DPA].

**Brief Summary of Substitute Bill
(As Amended by Committee)**

- Removes the requirement that police officers arrest 16 and 17 year olds for domestic violence assault that occurred in the last four hours when the arrest is requested by a parent or guardian.
- Removes the requirement that a juvenile detention facility must book into detention any person under age 18 brought to that detention facility pursuant to a domestic violence assault arrest.

HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

Majority Report: Do pass as amended. Signed by 12 members: Representatives Kagi, Chair; Senn, Vice Chair; Dent, Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Frame, Goodman, Griffey, Kilduff, Klippert, Lovick, Muri and Ortiz-Self.

Minority Report: Without recommendation. Signed by 1 member: Representative McCaslin.

Staff: Luke Wickham (786-7146).

Background:

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.

Arrest Without a Warrant.

A police officer that has probable cause to believe a person has committed a felony has the authority to arrest the person without a warrant. Generally, officers may only arrest persons without a warrant for committing misdemeanor or gross misdemeanor offenses when the offense is committed in the presence of the officer.

Mandatory Arrest for Domestic Violence.

The Legislature enacted legislation in 1984 requiring that officers arrest a person when the officer has probable cause to believe that person has committed domestic violence assault within the last four hours. In 1985 the age of mandatory arrest for domestic violence was increased to age 18 and older. In 1995 the age of mandatory arrest was reduced to age 16 and older. In 2016 the age of mandatory arrest was increased to age 18 again, but police officers are required to arrest 16 and 17 year olds for domestic violence assault when that arrest is requested by a parent or guardian.

A police officer must arrest and take into custody a person who is 18 years of age or older when the officer has probable cause to believe that the individual assaulted a family or household member within the preceding four hours and the officer believes:

- a felony assault occurred;
- an assault occurred resulting in bodily injury to the victim; or
- any physical action occurred that was intended to cause another person to reasonably fear imminent serious bodily harm or death.

In these circumstances, the officer shall arrest the person whom the officer believes to be the primary physical aggressor.

Assault.

Courts in Washington apply a common law definition of assault, which includes:

- 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.

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

There are four categories of assault ranging from Assault in the first degree, a class A felony, to Assault in the fourth degree, a gross misdemeanor.

Domestic Violence.

Certain crimes, including Assault, are identified as 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 have resided together in the past; persons 16 years of age or older who are residing together or who have resided together in the past who have or have 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 Amended Bill:

The requirement that police officers arrest 16 and 17 year olds when the officer has probable cause to believe that the child has assaulted a family or household member in the last four hours and the arrest is requested by the child's parent or guardian is removed.

The requirement that a juvenile detention facility must book into detention any person under age 18 brought to the facility pursuant to a domestic violence assault arrest is removed.

Amended Bill Compared to Substitute Bill:

The amended bill removes the requirement that police officers arrest 16 and 17 year olds when the officer has probable cause to believe that the child has assaulted a family or household member in the last four hours and the arrest is requested by the child's parent or guardian without adding language around the criteria that law enforcement must use in determining whether to arrest juveniles in those circumstances. Based on the language in the amended bill, police officers would have discretion regarding the arrest of individuals age 17 and younger for domestic violence assault.

The amended bill removes the requirement that a juvenile detention facility must book into detention any person under age 18 brought to the facility pursuant to a domestic violence assault arrest.

Appropriation: None.**Fiscal Note:** Available.**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.**Staff Summary of Public Testimony:**

(In support) There is uncertainty for law enforcement regarding the breadth of authority that they have after the changes that were made to domestic violence assault arrest for 16 and 17 year olds last year. This bill presents a hope that the law can be clarified. The underlying law that requires arrest for domestic violence assault was developed for adults and scooped in juveniles.

There is confusion among the law enforcement community regarding the mandatory arrest requirement at the request of a parent or guardian. There is a suggestion to remove one subsection of the bill, which would provide greater clarity.

(Opposed) None.

Persons Testifying: Senator Darneille, prime sponsor; and James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.