

SENATE BILL REPORT

SSB 5618

As Passed Senate, March 3, 2017

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: Human Services, Mental Health & Housing: 2/13/17, 2/14/17 [DPS].

Floor Activity:

Passed Senate: 3/03/17, 44-0.

Brief Summary of First Substitute Bill

- Specifies that a 16 or 17 year old is not subject to mandatory arrest for domestic violence assault when a parent or guardian requests the youth's arrest.
- Clarifies that although there is no mandatory arrest of a 16 or 17 year old, a police officer's authority to make an arrest if permitted by other laws is not changed by removing the domestic violence assault mandatory arrest requirement for 16 and 17 year olds.

SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

Majority Report: That Substitute Senate Bill No. 5618 be substituted therefor, and the substitute bill do pass.

Signed by Senators O'Ban, Chair; Miloscia, Vice Chair; Darneille, Ranking Minority Member; Carlyle, Hunt, Padden and Walsh.

Staff: Melissa Burke-Cain (786-7755)

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

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contact order or foreign protection order, and persons 16 years of age 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.

First through third degree assault are felony offenses, while fourth degree assault is a gross misdemeanor. Washington's criminal code does not define assault. The courts apply a common law definition. That common law definition includes:

- an attempt, with unlawful force, to inflict bodily injury upon another;
- unlawful touching with criminal intent; unlawful touching is non-consensual or otherwise privileged and either harmful or offensive; and
- putting another in apprehension of harm whether or not the actor intends to inflict or is capable of inflicting that harm.

Certain crimes, including assault, are 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.

In 2016, the age of mandatory arrest returned to 18 years of age or older when a family or household member is assaulted within the preceding four hours, the alleged assault is a felony, or causes bodily injury, or was a physical action intended to cause a person to reasonably fear serious bodily injury or death. Also in 2016, as an exception to the minimum age for mandatory arrest, a police officer is required to arrest a 16 or 17 year old at the parent's or guardian's request if the officer has probable cause to believe that the child has assaulted a family or household member in the preceding four hours. A juvenile detention facility is required to book any person under 18 years of age who is arrested for assaulting a family or household member.

Summary of First Substitute Bill: A police officer must arrest anyone over 18 years of age who has assaulted a family or household member in the preceding four hours if the alleged assault is a felony, or causes bodily injury, or was a physical action intended to cause a person to reasonably fear serious bodily injury or death. There is no mandatory arrest requirement for domestic violence assault for persons under 18 years of age. A police officer is not required to arrest a 16 or 17 year old if a parent or guardian requests a police officer to arrest a 16 or 17 year old. Eliminating the mandatory arrest requirement for 16 and 17 year olds upon a parent's request does not affect the police officer's authority to arrest a 16 or 17 year old when permitted by other laws.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 13, 2017.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days following the adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony on Proposed Substitute: *The committee recommended a different version of the bill than what was heard.* PRO: In some locations, the change to the law last year caused 13, 14, and 15 year olds to be taken into detention. This bill provides clear language that is more defensible.

CON: We are concerned that the language could be interpreted as never allowing a 16 or 17 year old to be arrested at the officer's discretion where there is probable cause. Even though there is no requirement for mandatory arrest of a 16 or 17 year old, the officer should be able to exercise discretion, with probable cause, to arrest when an arrest is appropriate under the circumstances.

Persons Testifying: PRO: Senator Darneille, Prime Sponsor.

CON: James McMahan, WA Assn. Sheriffs & Police Chiefs.

Persons Signed In To Testify But Not Testifying: No one.