
Public Safety Committee

HB 1517

Brief Description: Concerning domestic violence.

Sponsors: Representatives Goodman, Mosbrucker, Orwall, Griffey, Lovick, Davis, Appleton, Pettigrew, Pellicciotti, Kilduff and Valdez; by request of Uniform Law Commission.

Brief Summary of Bill

- Requires the Washington State Institute for Public Policy to conduct a study on domestic violence (DV) treatment programs operating under the new administrative regulatory model.
- Requires the Washington State University Department of Criminal Justice to develop a DV risk assessment tool.
- Establishes requirements for DV offenders participating in the Special Drug Offender Sentencing Alternative.
- Modifies community custody conditions for DV offenders.
- Establishes requirements for deferred prosecutions involving DV behavioral problems.
- Specifies timeframes for which DV no-contact orders entered as a condition of sentence remain in effect.
- Requires the enforcement of civil DV protection orders issued by Canadian Courts.

Hearing Date: 1/28/19

Staff: Kelly Leonard (786-7147).

Background:

A crime of domestic violence (DV) is a crime committed by one family or household member against another. Most criminal offenses may be considered DV offenses, so long as the prosecutor pleads and proves the facts of DV before the jury.

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.

Treatment and Risk Assessments.

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 Children, Youth, and Families (DCYF) (formerly the Department of Social and Health Services) to adopt administrative rules for the certification and regulation of individual programs. In 2018, DCYF repealed and replaced the administrative rules.

In 2017, legislation was enacted directing the Administrative Office of the Courts, through the Washington State Gender and Justice Commission, to form two work groups to address issues pertaining to DV treatment and DV risk assessments. The work groups submitted reports to the Legislature and Governor in June of 2018. The work groups expire on June 30, 2019.

Deferred Prosecution Programs.

A person charged with a misdemeanor or gross misdemeanor in district or municipal court may petition the court for a deferred prosecution. The person petitioning for a deferred prosecution must admit that substance abuse or mental health problems caused the person to commit the offense and that treatment is necessary to prevent a reoccurrence. In addition to other conditions to which the person must agree for a deferred prosecution, the person must be evaluated by a state-approved treatment provider.

A participant must undergo treatment in a two-year program. If the person successfully completes the program, the court will dismiss the charges three years after successful completion. If a person fails to complete the program, the court will determine whether to remove the person from the deferred prosecution and enter judgment on the charge.

Suspended Sentences.

A court may suspend the imposition or execution of a criminal sentence and direct that the suspension continue as long as the defendant complies with conditions of probation imposed by the court. The court retains jurisdiction over the defendant during this time and may modify or revoke its order suspending the sentence if the defendant violates or fails to carry out any of the court's conditions. A court of limited jurisdiction may suspend a sentence for a nonfelony DV offense for up to five years. Nonfelony DV sentences in cases heard in superior courts may be suspended for up to two years.

Drug Offender Sentencing Alternative.

The Drug Offender Sentencing Alternative (DOSA) is a sentencing alternative for felony offenders in which a sentence is reduced in exchange for completing a chemical dependency treatment program. An offender is eligible for the DOSA if:

- the conviction is not a violent or sex offense, and the conviction does not include a firearm or deadly weapon sentence enhancement;
- the conviction is not a felony impaired driving offense;

- the offender has no prior convictions for a sex offense at any time and no prior convictions for a violent offense within the previous 10 years;
- for a conviction under the Uniform Controlled Substances Act (a drug violation), the offense involved only a small quantity of the particular controlled substance, as determined by the court;
- the offender is not subject to a federal immigration deportation detainer or order and does not become subject to a deportation order during the period of the sentence; and
- the offender has not received a DOSA more than once in the previous 10 years before the current offense.

There are two types of DOSA programs: prison-based and residential. The prison-based DOSA involves a period of incarceration at the facility where the offender completed chemical dependency treatment, followed by a term of community custody. The residential DOSA does not involve incarceration; instead, the person receives chemical dependency treatment in the community while in community custody. The residential DOSA is reserved for offenders who would otherwise have had a shorter sentence.

Before imposing a DOSA, the court is required to order the DOC to complete either a risk assessment report or a chemical dependency screening report.

Community Custody.

Community custody is the portion of an offender's sentence served in the community subject to supervision by the DOC. Courts are mandated to order community custody for offenders convicted of certain crimes delineated in statute. Community custody conditions may include: living in an approved residence; refraining from contacting certain persons; drug and alcohol treatment; and others.

When an offender is receiving court- or DOC-ordered mental health or chemical dependency treatment, he or she must disclose to the provider where he or she is in community custody under DOC supervision.

If an offender violates the conditions of community custody, the offender may be subject to a variety of sanctions. Certain violations may result in the person being returned to confinement for specified periods.

Criminal No-Contact Orders and Civil Protection Orders.

There are several kinds of orders available to limit respondents' contact with victims. No-contact orders are commonly issued as part of criminal proceedings, and civil protection orders are available regardless of whether a criminal case is pending.

A police officer must arrest a person without a warrant if the officer has probable cause to believe that the person has violated a no-contact or civil protection order. A violation of a no-contact or protection order is generally a gross misdemeanor offense. A violation of a no-contact or protection order is a class C felony if the offender has two previous violations of an order or if the violation involves certain conduct.

DV No-Contact Orders. While a DV case is pending, the court may issue a no-contact order prohibiting the defendant from having contact with the victim or knowingly coming to or remaining within a specified location. When a defendant is found guilty, the court can issue a no-contact order as a condition of the sentence. Statute does not identify a specific period of time for which DV no-contact orders remain in effect. A recent Washington State Court of Appeals case, *State v. Granath*, held that post-conviction DV no-contact orders expire when the defendant has completed all other conditions of the sentence.

Civil DV Protection Orders. Civil DV protection orders are available to those who have suffered physical harm, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking by a family or household member.

A victim of DV may petition the court for a civil DV protection order. A court issuing a protection order may impose a variety of conditions, such as restraining the respondent from having contact with the victim and knowingly coming within a specified distance of a location.

The federal Violence Against Women Act requires states to enforce civil DV protection orders issued by another state, United States territory or possession, or tribal court. As such, state law contains procedures and requirements for the enforcement of out-of-state and tribal court protection orders. However, no such provisions exist for civil DV protection orders issued in Canada or other foreign nations.

Summary of Bill:

Treatment and Risk Assessments.

The Washington State Institute for Public Policy (WSIPP) must evaluate the effectiveness of the multi-tiered DV treatment model established under the new DCYF administrative rules for DV treatment. Specifically, the WSIPP must assess whether this model reduces or otherwise impacts the recidivism of DV offenders. To the extent feasible, the evaluation must also include: an assessment of the effectiveness of various treatment approaches utilized within the state; and a comprehensive review of the research evidence on the effectiveness of treatment models. The WSIPP must report initial findings to the Governor and Legislature no later than December 1, 2022, and final findings no later than December 1, 2024.

The Washington State University Department of Criminal Justice must develop and periodically update a DV risk assessment tool to be used by DOC and DV treatment providers to determine when an offender's DV crime and DV history are such that the offender is likely to commit DV in the future. The tool must also have a component for assessing whether mental illness or chemical dependency affect risk of re-offense. The risk assessment tool must be available for use no later than July 1, 2020.

The DV work groups administered by the Administrative Office the Courts are extended to June 30, 2020, for the purpose of evaluating and providing recommendations on additional items pertaining to DV treatment and risk assessments.

Sentencing.

When sentencing an offender convicted of a DV offense, the court shall order the offender to undergo alcohol or chemical dependency treatment or DV treatment services during incarceration. The offender is responsible for the cost of treatment unless the court finds the offender indigent. The DOC must develop and monitor transition and relapse prevention strategies, including risk assessment and release plans, to reduce risk to the community after a DV offender's release from custody.

Deferred Prosecution Programs.

A deferred prosecution program may be used for persons with DV behavioral problems as well as DV behavioral problems co-occurring with substance abuse or mental health problems.

Requirements are established for persons with DV behavioral problems participating in a deferred prosecution program. A petition for participation must allege that the offense arose from a DV behavior problem and must include a case history and risk assessment prepared by a DV treatment provider.

The court must impose certain conditions for DV offenders who participate in the program. Among those, the court must order: completion of and compliance with DV treatment; participation in appropriate ancillary or co-occurring treatment; compliance with related no-contact orders and protection orders; and surrender of firearms in accordance with certain current statutory requirements. The court may also order: self-help recovery support groups for substance abuse; abstinence from drugs and alcohol; and payment of restitution and costs.

A person may only participate in a deferred prosecution program one time for a DV offense, and he or she is not eligible if the offense was originally charged as a felony. In addition to other current grounds for appeals, a prosecutor may appeal a petition for deferred prosecution on the grounds that a prior stipulated order of continuance has been granted to the defendant.

Suspended Sentences.

Superior courts may suspend imposition of a nonfelony DV sentence and place the defendant on probation for five years, rather than up to two years.

Drug Offender Sentencing Alternative.

Before imposing a DOSA for a DV offender, the court must order the DOC to complete a presentence investigation, DV risk assessment, and chemical dependency screening report. The investigation must include, where applicable, an assessment as to whether effective DV treatment is available from a certified provider.

A DV offender participating in either a prison-based or residential DOSA must participate in DV treatment. In addition to other conditions currently authorized, a court may order a DOSA participant to pay for the costs of GPS monitoring for compliance with a no-contact order.

Community Custody.

For a DV offender serving a term of community custody, the DOC must assess his or her risk of re-offense using a DV risk assessment tool. For a DV offender, the DOC may impose no-contact conditions, electronic monitoring, and other conditions based on the risk to community safety or risk of DV re-offense.

A DV offender serving a term of community custody must disclose his or her custody status to his or her DV treatment provider.

No-Contact Orders.

Time periods are designated for which DV no-contact orders remain in effect. In nonfelony cases, a DV no-contact order remains in effect for a fixed period of time determined by the court, not to exceed five years from the date of sentencing or disposition. In felony cases, a no-contact order remains in effect for a fixed period of time determined by the court, not to exceed the adult maximum sentence. If the defendant remains subject to imprisonment, community supervision, conditional release, probation, or parole beyond the time period designated by the court, the order remains in effect until expiration of that condition. The court may modify an order to extend its expiration date, subject to these time limitations.

Civil Protection Orders.

The Uniform Recognition and Enforcement of Canadian DV Protection Orders Act is established.

"Canadian DV protection order" means a judgment or part of a judgment or order issued in a civil proceeding by a court of Canada under law of the issuing jurisdiction which relates to DV and prohibits a respondent from:

- being in physical proximity to a protected individual or following a protected individual;
- directly or indirectly contacting or communicating with a protected individual or other individual described in the order;
- being within a certain distance of a specified place or location associated with a protected individual; or
- molesting, annoying, harassing, or engaging in threatening conduct directed at a protected individual.

If a law enforcement officer determines there is probable cause to believe a valid Canadian DV protection order (order) exists and has been violated, the officer shall enforce the terms of the order in the same manner as a DV protection order issued in Washington. A copy of the order constitutes probable cause to believe that a valid order exists. However, if a record of an order is not presented, a law enforcement officer may consider other information in determining whether there is probable cause to believe that a valid Canadian DV protection order exists.

A person with a valid Canadian DV protection order may file it with Washington courts. Procedures are established for courts to enforce or refuse to enforce an order upon the application of a petitioner or respondent.

Appropriation: None.

Fiscal Note: Requested on January 24, 2019.

Effective Date: The bill takes effect 90 days after the session in which it is passed, except:

- sections 901 through 915, relating to Canadian DV protection orders, take effect January 1, 2020;
- sections 401 through 404, 501 through 504, and 601 through 609, relating to DOSA, community custody, and deferred prosecutions, take effect July 1, 2020.
- sections 801 through 803, relating to the DV work groups, contain an emergency clause and take effect June 30, 2019.