HOUSE BILL REPORT
HB 1517

As Reported by House Committee On:
Public Safety
Appropriations

Title: An act relating to domestic violence.

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 History:
Committee Activity:
Public Safety: 1/28/19, 2/7/19 [DPS];
Appropriations: 2/25/19, 2/28/19 [DP2S(w/o sub PS)].

Brief Summary of Second Substitute Bill

- Modifies definitions pertaining to domestic violence (DV) to distinguish between DV committed by intimate partners and family or household members.
- Requires the Washington State University Department of Criminal Justice to develop a DV risk assessment module for the current Washington One Risk Assessment tool, and requires the Department of Corrections to utilize the new module when conducting currently required risk assessments for incarcerated felony DV offenders.
- 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.

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.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Goodman, Chair; Davis, Vice Chair; Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member; Appleton, Graham, Griffey, Lovick, Orwall, Pellicciotti and Pettigrew.

Staff: Kelly Leonard (786-7147).

Background:

Domestic Violence.

A crime of domestic violence (DV) is generally a crime committed by one family or household member against another. "Family or household members" means spouses or domestic partners; former spouses or former domestic partners; persons who have a child in common, regardless of whether they have been married or have lived together at any time; adult persons related by blood or marriage; adult persons who are presently residing together or who have resided together in the past; persons age 16 or older who are presently residing together, or who have resided together in the past, and who have or have had a dating relationship; persons age 16 or older with whom a person age 16 or older has or has had a dating relationship; and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

Many criminal offenses may be considered DV offenses, so long as the prosecutor pleads and proves the facts of DV before the jury.

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 Department of Corrections (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.

Domestic Violence 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 Domestic Violence 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 Substitute Bill:

Domestic Violence.

Definitions of "domestic violence" are modified to include specified crimes committed by one family or household member against another, or by one intimate partner against another.

"Intimate partner" means: spouses, or domestic partners; former spouses, or former domestic partners; persons who have a child in common regardless of whether they have been married or have lived together at any time; adult persons presently or previously residing together who have or have had a dating relationship; persons age 16 or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship; and persons age 16 or older with whom a person age 16 or older has or has had a dating relationship.

"Family or household members" means: adult persons related by blood or marriage; adult persons who are presently residing together or who have resided together in the past; and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

Whenever a prosecutor institutes or conducts a criminal proceeding involving DV, the prosecutor must specify whether the victim and defendant are intimate partners or family or household members. Likewise, a petition for a civil DV protection order must also specify whether the victim and respondent are intimate partners or family or household members.

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 global positioning system (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 reoffense 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 reoffense.

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.

Substitute Bill Compared to Original Bill:

The current statutory definitions pertaining to DV are modified to distinguish between DV committed by intimate partners and family or household members. Intent language is added specifying that the legislative intent for reorganizing the definition is to facilitate data analysis rather than to substantively change DV cases.

A definition of "DV risk assessment" is added to the Sentencing Reform Act, defining the term as meaning the application of the DV risk assessment tool developed and validated by the Washington State University Department of Criminal Justice.

The work group pertaining to DV assessments is modified by removing the requirement that the work group assess whether to change the definition of DV, and adding the requirement that the work group evaluate and make recommendations regarding alternatives to mandatory arrest in DV cases.

The effective date for the provisions pertaining to sentencing, DOSA, community custody, and deferred prosecutions is changed from July 1, 2020, to January 1, 2021.

Appropriation: None.

Fiscal Note: Requested on January 24, 2019.

Effective Date of Substitute Bill: The bill takes effect 90 days after the session in which it is passed, except: sections 1001 through 1015, and 1101 and 1102, relating to Canadian DV protection orders, take effect January 1, 2020; sections 501 through 505, 601 through 603, and 701 through 709, relating to sentencing, DOSA, community custody, and deferred prosecutions, take effect January 1, 2021; and sections 901 through 903, relating to the DV work groups, contain an emergency clause and take effect June 30, 2019.

Staff Summary of Public Testimony:

(In support) The Legislature has made several changes to address the chronic social problem of DV. Recent research shows that past approaches were not effective. Now is the time to move forward with new, innovative, therapeutic approaches. For some DV offenders, the best approach is to incapacitate through incarceration or supervision, while others might benefit from a therapeutic model, either in lieu of or in addition to traditional interventions.

Domestic violence offenders are the highest risk offenders because they are often at the lowest point in their lives. For years, the response has been a "one size fits all" approach to treatment, which proved to be wholly inadequate. Practitioners witnessed the failure of DV treatment and lost confidence in the system.

In 2017 the Legislature directed the establishment of two work groups within the Gender and Justice Commission. At the same time, the DCYF repealed and replaced the rules for DV treatment. This bill is a product of the work groups and a response to those new rules. The goal is to improve the use and efficacy of DV treatment by studying the new rules and associated outcomes and by expanding the use of risk assessment and treatment for offenders. This bill integrates best practices into DV response. The state should have made these changes decades ago. Treatment and rehabilitation of DV offenders are the most important issues that the Legislature is dealing with today. The state cannot afford to keep making mistakes.

The bill requires the development and use of a new assessment tool to help courts and treatment providers make informed sentencing and treatment decisions. Accurate information is key to effective sentencing. In one particular case, a defendant was inappropriately granted a residential DOSA, and he was released into the community. He subsequently murdered two women, one of whom was house sitting for his intended victim. He should never have received a residential DOSA. He should have gone to prison, but the court did not have accurate or adequate information. These women paid the ultimate price for loopholes in the system. This bill will help prevent future violent incidents by requiring risk assessments, which will better inform the court.

The work groups should be extended to address additional issues, including the possibility of modifying mandatory arrest laws.

(Opposed) None.

(Other) While the bill contains important provisions, there are some concerns with enforcing Canadian civil DV protection orders. It is a tedious process to obtain certified copies of these orders from Canada. Getting copies according to the timelines necessary for a criminal prosecution may not be practical. In addition, there is a provision requiring an officer to make a good faith effort to contact a respondent. The state should be careful not to create a special relationship that could generate civil liability.

The deferred prosecution section should be modified to clarify that a deferred prosecution is only available on the first offense.

The courts need timely and dynamic information in DV cases. There is a lack of information in the current system, and the state should increase data collection on both a systemwide and individual basis in order to improve outcomes in the courts.

The bill should be expanded to include modifications to the definition of DV. The purpose would not be to change prosecutions or outcomes, but to facilitate data analysis. The language extending the work groups should be refined, and the state should also allocate funding for the work groups.

Persons Testifying: (In support) Representative Goodman, prime sponsor; Tamaso Johnson, Washington State Coalition Against Domestic Violence; David Martin, King County Prosecuting Attorney's Office; and Anthony Smith.

(Other) Russell Brown, Washington Association of Prosecuting Attorneys; James McMahan, Washington Association of Sheriffs and Police Chiefs; Judge Marilyn Paja and Judge Eric Lucas, Gender and Justice Commission.

Persons Signed In To Testify But Not Testifying: None.

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 31 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Cody, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Jinkins, Kraft, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Senn, Springer, Stanford, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

Staff: Jordan Clarke (786-7123).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Public Safety:

The Appropriations Committee (Committee) recommended the removal of the requirement for the Washington State Institute for Public Policy (WSIPP) to conduct a study on domestic violence (DV) treatment, as well as the requirement for the Washington State University (WSU) Department of Criminal Justice to create a specialized DV risk assessment tool and the requirement for the Department of Corrections (DOC) to conduct specialized DV risk assessments for all felony DV offenders. It recommended instead that the WSU Department of Criminal Justice develop a DV risk assessment module for the current Washington One Risk Assessment tool and require the DOC to utilize the new module when conducting currently required risk assessments for incarcerated felony DV offenders.

The Committee recommended the removal of the requirement for courts to order all DV felony offenders to undergo chemical dependency treatment or DV treatment services during incarceration. It also recommended removing the requirement for the DOC to develop and monitor transition and relapse prevention strategies to reduce the risk to the community posed by released DV offenders.

The Committee recommended modifying the provisions pertaining to the Drug Offender Sentencing Alternative (DOSA) by: requiring the DOC to conduct a presentence investigation before the court orders a DOSA; removing the requirement for the DOC to conduct a specialized DV risk assessment during the terms of incarceration and community custody; and requiring an offender in a prison-based DOSA to complete treatment while in

community custody, and otherwise retain the requirement for an offender in a residential DOSA to complete treatment while in community custody.

The Committee recommended extending the reporting date for the work groups within the Gender and Justice Commission from November 30, 2019, to June 30, 2020. The Committee also recommended the addition of a null and void clause.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 901 through 915, 1001, and 1002, relating to Canadian DV protection orders, which take effect January 1, 2020, sections 501 through 504, 601, 602, and 701 through 708, relating to sentencing, community custody, and reentry, which take effect January 1, 2021, and sections 801 through 803, relating to DV work groups, which contain an emergency clause and take effect immediately. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) Addressing treatment, rehabilitation, and sentence alternatives for DV offenders is among the most important criminal justice reform issue that the Committee will deal with this session. The proposed second substitute house bill represents the best recommendations from the Criminal Justice Commission Workgroup on DV treatment. These are long-term investments that will make a real difference in DV recidivism because the lack of DV sentence alternatives have costs. Years of Washington fatality reviews and WSIPP recidivism studies show that DV offenders have the highest rate of violent recidivisms and the highest rate of suicide, and they are at the highest risk because they are at the lowest point in their life. The bill represents an effort to have a smarter way to approach important DV sentence alternatives, to make meaningful investments in the long-term for a dangerous offender population, and to do so because inaction has a cost. Failure to address rehabilitation and treatment for offenders has real costs in the community.

(Opposed) None.

Persons Testifying: David Martin, King County Prosecuting Attorney's Office.

Persons Signed In To Testify But Not Testifying: None.