

HOUSE BILL REPORT

HB 1837

As Reported by House Committee On: Public Safety

Title: An act relating to protecting the public by increasing penalties for certain repeat offenders who engage in lurid criminal conduct.

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

Sponsors: Representatives Irwin, Griffey, Stokesbary, Vick, Orwall and Smith.

Brief History:

Committee Activity:

Public Safety: 2/15/19, 2/19/19 [DP].

Brief Summary of Bill

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

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: 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:

Indecent Exposure. A person commits the crime of Indecent Exposure if he or she intentionally makes any open and obscene exposure of his or her person or the person of

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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:

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

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

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.

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. Ranges are determined by 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. A higher seriousness level or offender score results in a longer sentence. If a felony does not have a seriousness level under the SRA, it is considered an "unranked" offense and the maximum term of confinement is one year.

Sexual Motivation. In a prosecution of any offense other than a sex offense, a prosecutor must file a special allegation of Sexual Motivation if evidence exists that the crime was committed for sexual gratification. If a jury finds Sexual Motivation in a felony case, the court is required to impose a sentencing enhancement, which adds time to the sentence 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 the Combined DNA Index System.

Summary of Bill:

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

Felony Indecent Exposure is ranked as a seriousness level II offense for circumstances where the present offense does not involve a victim under the age of 14.

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.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill addresses issues regarding repeat offenders who serially engage in lower-level sexual misconduct. The research indicates that this type of conduct escalates to more serious offenses over time, including Rape and other violent offenses. However, if the

state can intervene early, there is the ability to place someone in a restricted environment and offer therapy and other services to correct the behavior.

The bill establishes continuity of sentencing for Indecent Exposure. Current law provides the second or subsequent offense is a felony, but that would not apply if the first offense was charged under a municipal ordinance or out-of-state. This bill elevates a repeat offense to a felony regardless of where the initial conviction was charged.

The other part of the bill relates to Assault in the fourth degree with sexual motivation. This often constitutes groping of intimate areas, and law enforcement frequently respond to these types of calls on buses and other public places. If someone engages in this conduct repeatedly, then the state should elevate the offense to a felony.

(Opposed) None.

Persons Testifying: Representative Irwin, prime sponsor.

Persons Signed In To Testify But Not Testifying: None.