
Public Safety Committee

HB 1293

Brief Description: Reducing unduly harsh sentences for offenses committed by domestic violence survivors.

Sponsors: Representatives Simmons, Taylor, Ramel, Bateman, Senn, Peterson, Davis, Santos, Hackney, Ormsby and Pollet.

Brief Summary of Bill

- Establishes a sentencing alternative for survivors of domestic violence and authorizes the sentencing court to impose the sentencing alternative or a reduced sentence on a qualifying person.
- Authorizes the sentencing court to resentence a person or vacate a person's record of conviction on the basis that the person is a survivor of domestic violence.

Hearing Date: 2/2/21

Staff: Corey Patton (786-7388).

Background:

Sentencing Reform Act.

The Sentencing Reform Act (SRA) provides a determinate sentencing system in which sentencing courts generally impose sentences within a standard range. The standard range is determined by reference to a grid, which is based on the defendant's prior criminal history and the severity of the present offense. The grid provides the base sentence, but additional sentencing policies may increase or decrease the base sentence. For example, a sentencing enhancement adds a specified amount of time to the defendant's base sentence when the offense involves certain conduct. The SRA also authorizes courts to impose exceptional sentences either

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above or below the standard range for substantial and compelling reasons. The SRA provides a non-exhaustive list of mitigating circumstances that courts may consider when deciding whether to impose exceptional sentences below the standard range.

Vacating Records of Conviction.

A court may vacate a person's record of conviction to remove an offense from the person's criminal history if the person meets certain eligibility requirements, which vary depending on the nature of the conviction. Certain types of convictions do not qualify to be vacated.

Domestic Violence.

Domestic violence means physical harm, bodily injury, assault, the infliction of fear of imminent physical harm, bodily injury or assault, sexual assault, or stalking of one intimate partner by another intimate partner, or of one family or household member by another family or household member. Intimate partners are:

- spouses, or domestic partners;
- former spouses, or former domestic partners;
- persons with a child in common regardless of whether they have ever been married or lived together;
- adults presently or previously residing together who have or have had a dating relationship;
- persons 16 years of age or older presently or previously residing together who have or have had a dating relationship; and
- persons 16 years of age or older with whom a person 16 years of age or older has or has had a dating relationship.

Summary of Bill:

Sentencing Alternative for Survivors of Domestic Violence.

A sentencing court may impose a sentencing alternative or reduced sentence when sentencing a person for a felony where:

- the person is a survivor of domestic violence committed by an intimate partner;
- domestic violence suffered by the person was a significant contributing factor to the person's criminal conduct; and
- generally applicable sentencing requirements would be unduly harsh given the person's history, character, and condition, and the nature and circumstances of the person's criminal conduct.

The court may impose the sentencing alternative or reduced sentence regardless of whether the person previously raised any defense related to domestic violence. Prior to imposing the sentencing alternative or reduced sentence, the court must make findings as to whether the person qualifies. The court may consider:

- whether the underlying crime was committed against an intimate partner who committed domestic violence against the person;
- whether the person has been diagnosed with or treated for any behavioral health conditions

- related to prior victimization;
- evidence that the person's prior victimization affected the person's perception of safety and security;
- evidence that the person's prior victimization affected the person's perception of the ability to receive help through law enforcement or other government entities;
- evidence that the person's prior victimization has limited the person's ability to achieve financial independence; and
- any other factors the court deems relevant.

If the court imposes the sentencing alternative, the court must waive the sentence within the standard sentence range and any applicable enhancements and instead impose:

- an extended term of community custody with a reduced term of confinement; or
- an extended term of community custody without any term of confinement.

The court may determine the term of confinement and community custody, provided that the combined length of both does not exceed the standard range for the underlying crime including any enhancements.

Resentencing for Survivors of Domestic Violence.

A person serving a sentence imposed prior to the effective date of the bill may petition the court for resentencing on the basis that:

- the petitioner is a survivor of domestic violence committed by an intimate partner;
- domestic violence suffered by the petitioner was a significant contributing factor to the petitioner's criminal conduct; and
- the original sentence is unduly harsh given the petitioner's history, character, and condition, and the nature and circumstances of the person's criminal conduct.

The court may deny a petition for resentencing without a hearing. If the court orders a hearing, the court may consider the same factors and evidence it would have considered at a sentencing hearing after the effective date of this bill. The prosecuting attorney must make reasonable efforts to notify victims and survivors of victims about the petition and hearing date and provide access to related services. The court must provide an opportunity for victims and survivors of victims to present a statement personally or by representation. If the court grants the petition and resentsences the person, any new sentence may not be greater than the original sentence.

Vacating Records of Conviction for Survivors of Domestic Violence.

A person who committed an offense prior to the effective date of this bill may apply to the court for a vacation of the person's record of conviction on the basis that:

- the person is a survivor of domestic violence committed by an intimate partner;
- the domestic violence suffered by the person was a significant contributing factor to the person's criminal conduct; and
- the collateral consequences of the record of conviction create an unduly harsh burden given the person's history, character, and condition, and the nature and circumstances of the person's criminal conduct.

In reviewing a person's application, the court may consider the same factors and evidence it would have considered at a sentencing hearing after the effective date of this bill. However, the court may instead rely solely upon the person's sworn testimony at a hearing before the court. If the court finds that the person qualifies, the court may, in the interest of justice, waive any statutory restrictions relating to vacating convictions and proceed with vacating the person's record of conviction.

Appropriation: None.

Fiscal Note: Requested on January 29, 2021.

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