

HOUSE BILL REPORT

ESSB 5299

As Reported by House Committee On:
Community Safety, Justice, & Reentry

Title: An act relating to law enforcement officer protection.

Brief Description: Concerning law enforcement officer protection.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Braun, Rolfes, Conway, Holy, Mullet, Torres, Wagoner, Warnick, Wilson, C. and Wilson, L.).

Brief History:

Committee Activity:

Community Safety, Justice, & Reentry: 2/14/24, 2/20/24 [DPA].

Brief Summary of Engrossed Substitute Bill
(As Amended by Committee)

- Expands the definition of Assault in the third degree to include when a person assaults an off-duty law enforcement officer or other employee of a law enforcement agency with specified intent.
- Expands the special allegation and sentencing enhancement that apply to circumstances where the defendant intentionally assaults an on-duty law enforcement officer or other employee of a law enforcement agency with what appears to be a firearm, to also apply to circumstances involving an intentional assault with a deadly weapon.

HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

Majority Report: Do pass as amended. Signed by 8 members: Representatives Goodman, Chair; Simmons, Vice Chair; Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Davis, Fosse, Graham and Ramos.

Minority Report: Do not pass. Signed by 1 member: Representative Farivar.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Corey Patton (786-7388).

Background:

The classification of a crime generally determines the maximum authorized term of confinement and fine for an offense, subject to certain exceptions. For example, class C felonies are typically punishable by up to five years imprisonment, up to a \$10,000 fine, or both such imprisonment and fine. For most felony offenses, the Sentencing Reform Act determines a specific sentence range within the statutory maximum according to 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 person's criminal history. However, additional sentencing policies may further increase or decrease a person's sentence.

A person commits an assault if he or she attempts to inflict bodily injury on another person with unlawful force, unlawfully touches another person with criminal intent, or puts another person in apprehension of harm. An assault may be classified as Assault in the first, second, third, or fourth degree, depending on the specific circumstances.

A person commits Assault in the third degree if he or she, under circumstances not amounting to Assault in the first or second degree, assaults a specific category of person or commits the assault with certain intent or criminal negligence accompanied by other specific factors. For example, Assault in the third degree includes when a person assaults a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties. Assault in the third degree is a class C felony ranked at seriousness level III.

The prosecuting attorney may also file a special allegation against a defendant convicted of Assault in the third degree committed against an on-duty law enforcement officer or other employee of a law enforcement agency if the defendant intentionally committed the offense with what appears to be a firearm. If the prosecuting attorney proves the special allegation beyond a reasonable doubt to the finder of fact, then a sentencing enhancement must be imposed that increases the standard range of the defendant's sentence by 12 months.

Summary of Amended Bill:

The definition of Assault in the third degree is expanded to include when a person assaults an off-duty law enforcement officer or other employee of a law enforcement agency, if the assault was committed with intent to specifically target the officer or employee due to their employment as a law enforcement professional. The special allegation and sentencing enhancement that apply to circumstances where a defendant intentionally commits Assault in the third degree against an on-duty law enforcement officer or other employee of a law enforcement agency with what appears to be a firearm are expanded to also apply to

circumstances where the defendant intentionally commits the offense with a deadly weapon.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill: (1) provides that the special allegation and sentencing enhancement for certain assaults committed against an on-duty officer or other employee of a law enforcement agency apply to assaults with a deadly weapon or what appears to be a firearm, rather than assaults with what appears to be a deadly weapon; and (2) eliminates the amendatory provision requiring reporting and data collection for incidents where an on-duty officer is physically harmed by a citizen.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The state has done a good job of addressing training and accountability for officers, but not enough has been done to protect officers by holding people who assault them accountable for their actions. These interactions are equally influenced by the actions of citizens. Statistics show that attacks on officers have increased by 42 percent over the previous five years. This includes assaults with firearms, edged weapons, blunt weapons, vehicles, and fists. Last year, 2023, was one of the most dangerous years for law enforcement nationally. Officers are like anyone else in their daily lives, but they are terrified of running into a person they have previously arrested. Officers should be provided an environment that is as safe as possible given the challenges they face. This bill restores critical thinking and a balanced approach to public safety policy, and will benefit other professions aside from law enforcement.

The current data collection efforts by the Office of the Attorney General are imbalanced because the only data collected is about where officers go wrong and misapply the use of force. Instead, look at what officers are reacting to that causes them to use force in the first place. This bill requires data collection about citizens involved in assaults against law enforcement, which will give the public a clearer picture framed with balanced data, uphold our social contract, and recognize that officers are inherently in harm's way.

(Opposed) It has been demonstrated that increasing the length of sentences does not deter crime, nor does it make the public or officers any safer. Assaulting an officer and assaulting someone with a deadly weapon are already felony offenses. The legal definition of assault is any unpermitted touching of another that is offensive, which includes touching, grabbing,

pushing, shaking, slapping, or spitting, no matter how mild. Imagine how this could play out in a divorce with contested custody where one party is an officer. This bill makes a mountain out of a molehill and gives police more power to punish contempt, even when an officer is off duty.

There is no doubt that mandating a dashboard for data about citizen assaults against law enforcement will be weaponized in criminal and civil cases. This bill twists the intended purpose of the officer use of force data collection requirements.

Persons Testifying: (In support) Senator John Braun, prime sponsor; Sheldon Beddo; and James McMahan, Washington Association of Sheriffs and Police Chiefs.

(Opposed) David Trieweler, Washington Association of Criminal Defense Lawyers and Washington Defender Association; and Enoka Herat, American Civil Liberties Union—Washington.

Persons Signed In To Testify But Not Testifying: None.