

SENATE BILL REPORT

SHB 2048

As Passed Senate, February 27, 2024

Title: An act relating to supervision of domestic violence in criminal sentencing.

Brief Description: Concerning supervision of domestic violence in criminal sentencing.

Sponsors: House Committee on Community Safety, Justice, & Reentry (originally sponsored by Representatives Mosbrucker, Goodman, Graham, Doglio and Davis).

Brief History: Passed House: 2/6/24, 97-0.

Committee Activity: Law & Justice: 2/15/24, 2/20/24 [DP].

Floor Activity: Passed Senate: 2/27/24, 48-0.

Brief Summary of Bill

- Removes the requirement that domestic violence was pleaded and proven in provisions relating to supervision of individuals convicted of specified domestic violence offenses.
- Requires the Department of Corrections to conduct an audit of its supervisory obligations for specified domestic violence offenses.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Padden, Ranking Member; Kuderer, McCune, Pedersen, Salomon, Torres, Valdez, Wagoner and Wilson, L..

Staff: Ryan Giannini (786-7285)

Background: The Sentencing Reform Act and Domestic Violence Offenses. The Sentencing Reform Act (SRA) provides the framework for sentencing of persons convicted of felony offenses. A crime of domestic violence is defined by statute to mean

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certain crimes when committed by one family member, household member, or intimate partner against another. The SRA further defines domestic violence as physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, sexual assault, or stalking of one intimate partner or family or household member by another.

Pleaded and Proven. Several provisions of the SRA relating to domestic violence include a requirement that domestic violence was pleaded and proven, including provisions related to supervision of people convicted of certain domestic violence offenses.

The Department of Corrections (DOC) must supervise certain individuals who are sentenced to probation in superior court for specified offenses. Specifically, DOC must supervise individuals who have:

- a current conviction for a repetitive domestic violence offense where domestic violence has been pleaded and proven after August 1, 2011; and
- a prior conviction for a repetitive domestic violence offense or domestic violence felony offense where domestic violence has been pleaded and proven after August 1, 2011.

DOC must also supervise an individual sentenced to community custody if the individual has a current conviction for:

- a domestic violence felony offense where domestic violence has been pleaded and proven after August 1, 2011, and a prior conviction for a repetitive domestic violence offense or domestic violence felony offense where domestic violence was pleaded and proven after August 1, 2011; or
- a domestic violence felony offense where domestic violence has been pleaded and proven.

Summary of Bill: Pleaded and Proven Standard Removed. The requirement under the SRA that domestic violence was pleaded and proven is eliminated in provisions relating to supervision of individuals convicted of certain domestic violence offenses.

Audit. DOC must conduct an audit and report on its supervisory obligations with respect to specified domestic violence offenses. The audit must identify: (1) the number of individuals for whom a Washington court ordered supervision by DOC for specified offenses, (2) the number of individuals within the number identified for whom supervision was ordered but did not or has not occurred, and (3) the reason or reasons why DOC did not undertake supervision if the numbers identified are not the same.

The audit and report must cover the time period between July 1, 2022, and June 30, 2024, and must be reported to the appropriate committees of the Legislature by December 1, 2024.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This is clean-up legislation to clarify the Legislature's intent for the DOC to supervise domestic violence defendants with prior convictions for certain domestic violence offenses. Individuals who commit domestic violence with prior qualifying domestic violence convictions are sometimes not supervised due to administrative interpretations of what pleaded and proven means, such as paperwork failing explicitly to state that domestic violence was pleaded and proven, even though every domestic violence case, by its nature, must be pleaded and proven. There is consensus that removing the pleaded and proven requirement from the supervision requirements for DOC would greatly reduce confusion.

CON: This is an answer to a problem that does not exist. Any portion of a sentence that increases a penalty, like imposition of community custody, must be pleaded and proven. Removing this language would run afoul of the Sixth Amendment and *Blakely v. Washington*. Relying on the good intentions of prosecutors as to what must be pleaded and proven is not how justice should be meted out. It is a recipe for injustice. Taking out the pleaded and proven language could signal to courts that domestic violence does not need to be pleaded and proven, and instead, would just need to meet the definition of domestic violence.

Persons Testifying: PRO: Representative Gina Mosbrucker, Prime Sponsor; David Martin, KCPAO DV Unit.

CON: Ramona Brandes, WACDL/WDA.

Persons Signed In To Testify But Not Testifying: No one.