

# SENATE BILL REPORT

## ESSB 5299

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As Passed Senate, January 17, 2024

**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:** Law & Justice: 1/31/23, 2/02/23 [DPS].

**Floor Activity:** Passed Senate: 1/17/24, 47-1.

**Brief Summary of Engrossed First Substitute Bill**

- Classifies assault of an off-duty law enforcement officer as a class C felony.
- Modifies the sentencing enhancement for assaulting a law enforcement officer with a firearm to include assaulting a law enforcement officer with a deadly weapon.
- Requires law enforcement agencies to report any incident where a law enforcement officer employed by the agency is physically harmed by a citizen while performing duties.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5299 be substituted therefor, and the substitute bill do pass.

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

**Staff:** Joe McKittrick (786-7287)

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*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.*

**Background:** The term assault is not defined in the criminal code of Washington. Courts use common law to define the term and have recognized that an assault may be an attempt, with unlawful force, to inflict bodily injury upon another, an unlawful touching with criminal intent, or putting another in apprehension of harm whether the actor actually intends to inflict, or is incapable of inflicting, that harm.

The crime of assault is divided into four degrees depending on the manner in which it was committed, or the amount of harm caused to the victim.

Assault in the third degree may be committed in different ways including but not limited to:

- assaulting another person with the intent to prevent or resist the execution of any lawful process or mandate of any court officer or the lawful apprehension or detention of the perpetrator or another person;
- with criminal negligence, causing bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm;
- assaulting a law enforcement officer or other employee of a law enforcement agency who was performing their official duties at the time of the assault; or
- assaulting a peace officer with a projectile stun gun.

Assault in the third degree is a class C felony punishable by up to five years imprisonment, a fine up to \$10,000, or both. An additional 12 months is added to the standard sentence range if it is plead and proven beyond a reasonable doubt that the defendant intentionally committed the assault of a law enforcement officer or other employee of a law enforcement agency who was performing their official duties with what appears to be a firearm. The court will make a finding of fact of the special allegation. If a jury trial occurs, the jury must find a special verdict as to the special allegation if it finds the defendant guilty.

**Summary of Engrossed First Substitute Bill:** Assaulting a law enforcement officer or other employee of a law enforcement agency who was off duty at the time of the assault, if the assault was committed with the intent to specifically target the person due to their employment as a law enforcement professional, is classified as assault in the third degree.

The special allegation of intentionally assaulting a law enforcement officer or other employee of a law enforcement agency who was performing their official duties at the time of the assault with what appears to be a firearm is expanded to include intentionally assaulting such law enforcement officials with what appears to be a deadly weapon.

Each law enforcement agency in Washington must report each incident where a law enforcement officer employed by the agency is physically harmed by a citizen while performing duties within the scope of their employment. The report must contain details of the physical harm and the means of committing the harm, whether or not subsequent charges were filed against the citizen, the ultimate disposition of the case if charges were filed or the reasoning if charges were not filed, and the age, gender, race, and ethnicity of the individual who assaulted the officer.

**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 on First Substitute:** PRO: There has been a lot of effort in recent years to work on training and accountability for law enforcement officials. There should be recognition that law enforcement officers are increasingly subject to doxing and threats to their lives, families, and property, and there should be push back on that because it is the right thing to do. Law enforcement officers enter this career to help communities. This is a straightforward bill. It increases the penalty for those types of behaviors. Washington is at the very bottom in terms of the number of law enforcement officers per capita in the country. Almost 500 net officers were lost last year. There is a lot of work to do to recruit and retain the best into the law enforcement community. This bill returns critical thinking and a balanced approach to public safety policy. Regardless of whether people agree with this career choice, all can agree that those who work should be able to do so safely.

CON: This bill would turn another misdemeanor crime into a felony. Increasing punishment and sentence lengths doesn't deter crime or make police or public any safer. This bill would make mountains out of mole hills. It turns any alleged misdemeanor assault against an off-duty police officer into a felony. This includes touching, grabbing, pushing, shaking, slapping, spitting, and other mild forms of contact. Any mild touching can now be a felony depending on how the officer feels. It gives more power to police to punish "contempt of cop." It is not necessary to give police more power to punish citizens. Shoving matches at a pickup basketball game, tackling a fleeing shoplifter, a slap from a significant other, possibly in self-defense, or an argument at a bar turning into a shoving match can all potentially be turned into felonies. This gives more power to punish contempt of cop offenses. It is not necessary to give the police more power to punish disrespectful citizens.

**Persons Testifying:** PRO: Senator John Braun, Prime Sponsor; Sheldon Beddo; Teresa Taylor, WACOPS - Washington Council of Police and Sheriffs; Taylor Gardner, WASPC.

CON: David Trieweiler, Washington Association of Criminal Defense Lawyers/Washington Defender Association.

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