

HOUSE BILL REPORT

HB 2279

As Reported by House Committee On:
Public Safety & Emergency Preparedness

Title: An act relating to the offense of assault of a child in the first degree by requiring the review of the sentencing of offenders and modifying the conditions of release.

Brief Description: Addressing the offense of assault of a child in the first degree by requiring the review of the sentencing of offenders and modifying the conditions of release.

Sponsors: Representatives Hurst, Hope, Dunshee, Kelley and Roach.

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 3/6/09 [DP].

Brief Summary of Bill

- Prohibits an offender, convicted of Assault of a Child in the first degree and serving a term of community custody for the offender, from serving in any capacity where he or she has supervision of children.
- Requires the Sentencing Guidelines Commission to review the crime of Assault of a Child in the first degree as it relates to the elements of the crime and sentencing under the Sentencing Reform Act.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: Do pass. Signed by 8 members: Representatives Hurst, Chair; O'Brien, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Appleton, Goodman, Kirby and Ross.

Staff: Yvonne Walker (786-7841)

Background:

The crime of Assault in the first degree occurs when a person, with intent to inflict great bodily harm:

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

- assaults another with a firearm, deadly weapon, or by any force or means likely to produce great bodily harm or death;
- administers, exposes, or transmits poison, human immunodeficiency virus (HIV), or any other destructive or noxious substance; or
- assaults another and inflicts great bodily harm.

A person commits Assault of a Child in the first degree if the offender is over the age of 18 years old and he or she:

- commits assault in the first degree against a child under the age of 13; or
- intentionally assaults a child under the age of 13 by: (1) recklessly inflicting great bodily harm to the child; or (2) causing substantial bodily harm to the child, and has previously engaged in a pattern or practice of abuse of a child.

"Substantial bodily harm" is defined as bodily injury that involves a temporary but substantial disfigurement, or that causes a temporary but substantial loss or impairment of the function of any body part or organ, or that causes a fracture of any body part or organ.

"Great bodily harm" is defined as bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the functions of any bodily part or organ.

The crime of Assault of a Child in the first degree is a serious violent offense that is classified as a seriousness level XII, class A felony offense under the Sentencing Reform Act. A first-time offender with no previous criminal history would receive a sentence of 93 - 123 months in prison. A person convicted of a serious violent offense is limited to having his or her sentence reduced by no more than 10 percent via earned release time (good time). As a class A felony offense, the crime of Assault of a Child is also a strike under Washington's "Three Strikes and You're Out" law where a persistent offender is subject to a sentence of life in prison without the possibility of parole.

The crime of Assault of a Child is also considered a "crime against persons." If a crime is designated as a crime against persons, additional restrictions may be imposed on the convicted person at sentencing. Such restrictions include that the convicted person cannot have his or her record of conviction cleared, cannot qualify to earn up to 50 percent of earned release time, and may be subject to a mandatory term of community custody.

Community Custody.

"Community custody" means that portion of an offender's sentence of confinement served in the community subject to controls placed on the offender's movement and activities by the Department of Corrections (DOC). While on community custody, offenders are subject to a variety of conditions. For example, unless waived by the court, the terms of an offender's community custody must include:

- reporting to a community corrections officer;
- working at the DOC approved education, employment, or community restitution;
- refraining from possessing or consuming controlled substances;
- paying supervision fees; and
- obtaining prior DOC approval for residence location and living arrangements.

In addition, the court may impose a variety of conditions of community custody, including:

- remaining within, or outside of, specified geographical boundaries;
- refraining from contacting the victim or a specified class of individuals;
- participating in counseling;
- refraining from consuming alcohol; or
- complying with crime-related conditions.

The DOC is also authorized to impose conditions of community custody as long as they do not conflict with any court-ordered conditions.

Sentencing Guidelines Commission.

The Sentencing Guidelines Commission (Commission) is a state agency created by the Legislature in 1981 as part of the Sentencing Reform Act. The Commission serves as an independent body to develop criminal sentencing guidelines and standards for recommendation to the Legislature. The Commission's responsibilities include:

- serving as a clearinghouse and information center on adult and juvenile sentencing;
- conducting ongoing research on sentencing and related issues; and
- evaluating state sentencing policies with the goal of achieving consistencies between sentencing ranges and standards for the multitude of offenses defined in state law.

The Commission consists of 20 voting members, 16 of whom are appointed by the Governor. The appointed members include: four superior court judges, two defense attorneys, two prosecutors, four citizens, the chief of a local law enforcement agency, one county elected official, one city elected official, and one administrator of juvenile court services. There are four ex-officio voting members: the Secretary of the Department of Corrections, the Director of the Office of Financial Management, the Chair of the Indeterminate Sentence Review Board, and the head of the state agency (or his or her designee) having responsibility for juvenile corrections programs. Four legislators are appointed by the leadership of the House of Representatives and the Senate and serve as non-voting members.

Summary of Bill:

Community Custody.

As a condition of community custody, the court must prohibit an offender sentenced for Assault of a Child in the first degree from serving in any paid or volunteer capacity where he or she has control or supervision of children under the age of 13.

Sentencing Guidelines Commission.

The Commission must study the crime of Assault of a Child in the first degree. As part of the study, the Commission must consider whether the current statutory sentence for Assault of a Child in the first degree should be revised while taking into account the following factors:

- the use of advisory sentencing guidelines for Assault of a Child in the first degree;
- the modification of the mandatory minimum term of confinement for an offender convicted of Assault of a Child in the first degree;

- the statutory provisions surrounding earned early release for an offender convicted of Assault of a Child in the first degree;
- the restructuring or adjusting of community custody conditions for offenders convicted of Assault of a Child in the first degree; and
- the fiscal impact of any proposed recommendations.

The Commission must submit its findings and recommendations to the appropriate committees of the Legislature by December 31, 2009.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on August 1, 2009.

Staff Summary of Public Testimony:

(In support) In September 2007, the parents of Eryk Woodruff left their children in the care of a family friend. During that time period, Eryk, one of their children, was beaten so badly by the family friend that it was thought that he would not survive. Eryk survived but he is not the same child as before. His future is ruined, and the entire life of the family has changed and will never be the same again. The parents were told that the only crime the offender could be convicted of was Assault of a Child in the first degree. After the offender is released in 10 years, he will be able to move on with his life with no restrictions. This particular case has affected the parents physically, emotionally, and financially.

Police officers often respond to serious crimes as a first responder. This bill addresses whether an offender convicted of Assault of a Child can have contact with children once he or she is released. The bill makes it mandatory (instead of discretionary) that a person cannot take a position as paid or volunteer supervising children under the age of 13 years if they have been convicted of Assault of a Child. The second part of the bill requires the Commission to look at the whole picture surrounding the crime of Assault of a Child. However, it is recommended that the bill be amended to require the Commission to also consider whether Assault of a Child would be a crime that could appropriately be put under the determinate-plus sentencing scheme similar to sex offenses.

There are many positions where people work with kids and where background checks are not done. Any prohibition such as the one listed in this bill is another step that the Legislature can take to ensure the protection of children in our community.

(Opposed) None.

Persons Testifying: Representative Hope; Representative Dunshee; Rachel Pierce; Russell Woodruff; Tom McBride, Washington Association of Prosecuting Attorneys; and Don Pierce, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.