

HOUSE BILL REPORT

ESHB 2427

As Passed House:
February 12, 2010

Title: An act relating to punishment for domestic violence offenders.

Brief Description: Ensuring punishment for domestic violence offenders.

Sponsors: House Committee on Public Safety & Emergency Preparedness (originally sponsored by Representatives Pearson, Hurst, Bailey, Goodman, Kirby, Chandler, Herrera, O'Brien, Warnick, Ross, Condotta, Dammeier, Shea, Klippert, Smith, Walsh, Parker, Jacks, Blake, Rodne, Williams, McCune, Campbell, Johnson, Eddy, Morrell, Kelley, Short, Maxwell, Sullivan, Conway, Roach, Kristiansen, Haler, Sells, Schmick, Ericks, Ormsby, Kretz, Moeller and Hope; by request of Attorney General).

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 1/12/10, 1/13/10 [DPS];
General Government Appropriations: 2/4/10 [DPS(PSEP)].

Floor Activity:

Passed House: 2/12/10, 97-0.

Brief Summary of Engrossed Substitute Bill

- Requires double scoring for prior felony offenses that are domestic violence-related and single scoring for prior non-felony offenses that are domestic violence-related for purposes of calculating an offender's sentence.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill 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).

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS

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.

Majority Report: The substitute bill by Committee on Public Safety & Emergency Preparedness be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Darneille, Chair; Takko, Vice Chair; McCune, Ranking Minority Member; Armstrong, Assistant Ranking Minority Member; Blake, Crouse, Dunshee, Hudgins, Kenney, Klippert, Pedersen, Sells, Short, Van De Wege and Williams.

Staff: Alex MacBain (786-7288).

Background:

Under the Sentencing Reform Act (SRA), an offender convicted of a felony has a standard sentence range that is based on the seriousness of the offense and the offender's prior felony convictions. The number of points an offender receives for current and prior felonies varies according to certain rules. Generally, the SRA and the points that an offender receives does not apply for misdemeanor or gross misdemeanor offenses.

Domestic violence can be generally defined as any action that causes physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; sexual assault of one family or household member by another; or the stalking of one family or household member by another family or household member.

Often victims of domestic violence seek help and protection through a court order. There are several types of orders a court may grant that restrict a person's ability to have contact with another: (1) protection orders; (2) no-contact orders; (3) restraining orders; and (4) foreign protection orders.

Protection Orders. A protection order can be issued by a court in a civil proceeding. There are two types of protection orders authorized by statute: domestic violence protection orders and anti-harassment protection orders. A victim of domestic violence can obtain a domestic violence protection order against a respondent. The order can provide several types of relief including electronic monitoring, batterer's treatment, and a requirement that the respondent refrain from contacting the petitioner. Violation of a domestic violence protection order is a gross misdemeanor offense unless the respondent has two prior convictions for violating a domestic violence protection order or other similar federal or out-of-state order, in which case the violation is a class C felony offense.

No-Contact Orders. A no-contact order can be issued by a court in a criminal proceeding. The court generally issues a no-contact order when a defendant is released from custody prior to trial or as part of the defendant's sentence. There are two types of prosecutions for which no-contact orders are statutorily authorized: prosecutions for criminal harassment and prosecutions for crimes involving domestic violence. A law enforcement officer must enforce a no-contact order issued as part of a prosecution for a crime involving domestic violence. Violation of such a no-contact order is a gross misdemeanor offense, unless the defendant has two previous convictions for violating a domestic violence protection order or other similar federal or out-of-state order, in which case the violation is a class C felony offense.

Restraining Orders. As part of a civil proceeding, a court may also issue a restraining order that enjoins the person subject to the order from contacting another party. Such restraining orders can be permanent or temporary. A court can grant a permanent or temporary restraining order as part of a divorce proceeding, a non-parental action for child custody, an action involving the abuse of a child or an adult dependent person, or a paternity action. A court can grant a temporary restraining order (and not a permanent restraining order) in connection with proceedings where there have been allegations of abuse of a child or a dependent adult person. A violation of a restraining order issued as part of a divorce proceeding or an action involving the abuse of a child or an adult person is a misdemeanor offense. A violation of a restraining order issued as part of a non-parental action for child custody or a paternity action is a gross misdemeanor offense.

Foreign Protection Orders. A foreign protection order is an injunction or similar order relating to domestic violence, Harassment, sexual abuse, or Stalking issued by a court of another state, territory, or possession of the United States, the Commonwealth of Puerto Rico, the District of Columbia, a United States military tribunal, or a tribal court. A violation of a foreign protection order is generally a gross misdemeanor offense, but becomes a class C felony offense in the following three circumstances: (1) the violation is an Assault that does not amount to Assault in the first or second degree; (2) the violation involved conduct that is reckless and creates a substantial risk of death or serious physical injury to another person; or (3) the offender has at least two prior convictions for violating the provisions of a no-contact order, a domestic violence protection order, or a comparable federal or out-of-state order.

Aggravating Circumstances.

Under the SRA, the court may impose imprisonment in addition to the standard sentencing range if specific conditions for sentencing enhancements are met. The U. S. Supreme Court, in *Blakely v. Washington*, ruled that any factor that increases a defendant's sentence above the standard range, other than the fact of a prior conviction, must be proven to a jury beyond a reasonable doubt. To do otherwise would violate the defendant's right to a jury trial under the Sixth Amendment. The SRA includes a specific list of aggravating and mitigating circumstances that a court may consider when imposing a sentence outside of the standard sentencing range for a felony offense involving domestic violence.

Summary of Engrossed Substitute Bill:

The formula for calculating an offender's score under the SRA is adjusted. For the purpose of computing an offender's score, if the present conviction is for a felony domestic violence offense, an offender must receive:

- two points (double score) for each prior adult and juvenile offense involving one of the following felony domestic violence-related offenses:
 1. a violation of a no-contact order or protection order;
 2. Harassment;
 3. Stalking;
 4. first degree Burglary;
 5. first and second degree Kidnapping;
 6. Unlawful Imprisonment;
 7. first and second degree Robbery;

8. first, second, and third degree Assault; and
9. first and second degree Arson.

- one point (single score) for each prior adult and juvenile repetitive domestic violence offense where domestic violence was plead and proven. "Repetitive domestic violence offenses" include the following non-felony offenses: Assault, violation of a no-contact order or protection order, Harassment, and Stalking.

In all cases, the charge for domestic violence must be plead and proven to a jury.

Repetitive domestic violence convictions must not be included in an offender's score if the offender has spent 10 years in the community without being convicted of a new crime since his or her last date of release from confinement or entry of judgment and sentence.

Aggravating Circumstance.

An aggravating circumstance that permits an exceptional sentence when the offense was part of a an ongoing pattern of abuse of the victim is changed to a pattern or abuse involving a victim or multiple victims.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on August 1, 2011.

Staff Summary of Public Testimony (Public Safety & Emergency Preparedness):

(In support) Between January 1997 and June 2006 there have been an estimated 359 people killed by domestic violence abusers. Last year the Pierce County YMCA served an estimated 300 women and children in shelters and had to turn away over 200 people. There are enumerable costs that relate to each domestic violence offense that takes place. Domestic violence affects not only the victim, but the victim's friends, family members, employers, police officers, and the community at large.

Studies have shown that there is a small group of offenders that recidivate. This bill targets the worst of the worst serial domestic violence abusers. Passage of this legislation will help restore victim confidence in the criminal justice system by putting serial abusers away for a long time and holding them accountable. This bill will not only target violent crime but will also save lives.

Washington has always been a leader in preventing domestic violence but last year's economy and fiscal constraints had a devastating effect in the community. Many programs were eliminated, services were reduced, and many programs lost valuable employees. In addition, an amendment is suggested to clarify that there will be no retroactive scoring until after the date of implementation.

(With concerns) There is fear that there will not be funding to implement this bill and even prosecutors' offices across the state worry that there will be no money or personnel to implement the changes in the bill.

(Opposed) It appears the way the bill is currently structured that there may be a *Blakely v. Washington* problem relating to when the sentencing occurs. It is suggested that the bill should be reviewed for potential constitutional problems that could result in costly litigation.

Staff Summary of Public Testimony (General Government Appropriations):

(In support) Studies show that domestic violence felons are the single greatest risk for future violent behavior. Under the current sentencing scheme, these offenders are cycled through the system, which costs a lot of money. There is also ongoing collateral damage that domestic violence causes. It has costly impacts that are not reflected in the fiscal note. Domestic violence drives huge costs for emergency rooms, it is one of the leading causes of homelessness, it leads to job loss for victims, and it has a huge impact on children. Domestic violence presents huge costs for law enforcement, employers, victims, families, and the community at large.

There is a small population of domestic violence offenders who commit a huge amount of the crime. This bill targets the worst of the worst and holds them accountable for their crime. King County did a study that indicated that there would be about 271 offenders that would be impacted by this bill after about seven years. If an offender's misdemeanor domestic violence criminal history doesn't matter and the offender knows it doesn't matter, then the offender will just keep committing the violence. This bill targets those repeat offenders and stages the impact over time, which is necessary in the current economic environment.

There are a lot of people who have been invested in this issue for many years to get this bill to this point.

(Opposed) None.

Persons Testifying (Public Safety & Emergency Preparedness): (In support) Representative Pearson, prime sponsor; Trese Todd, Thrivers Action Group; Natalie McNair-Huff, YWCA Pierce County; David Martin, King County Prosecuting Attorney; Mickey Newberry and Chris Johnson, Office of the Attorney General; and Judy Bradley, Washington Federation of State Employees.

(With concerns) Mark Roe, Snohomish County Prosecuting Attorney.

(Opposed) Michael Hanbey, Washington Association of Criminal Defense Lawyers.

Persons Testifying (General Government Appropriations): David Martin, King County Prosecuting Attorney; Keith Galbraith, Family Renewal Shelter; Chris Johnson, Office of the Attorney General; Trese Todd, Thrivers Action Group; and Maria Cumero.

Persons Signed In To Testify But Not Testifying (Public Safety & Emergency Preparedness): None.

Persons Signed In To Testify But Not Testifying (General Government Appropriations):
None.