

# HOUSE BILL REPORT

## HB 2777

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

**Title:** An act relating to modifying domestic violence provisions.

**Brief Description:** Modifying domestic violence provisions.

**Sponsors:** Representatives Goodman, O'Brien, Driscoll, Kessler, Maxwell, Finn, Hurst, Williams, Appleton, Hudgins, Kelley, Ericks, Morrell, McCoy, Seaquist, Green, Carlyle, Conway, Pearson and Simpson.

**Brief History:**

**Committee Activity:**

Public Safety & Emergency Preparedness: 1/26/10, 1/27/10 [DPS].

**Brief Summary of Substitute Bill**

- Adjusts how prior non-felony, domestic violent-related offenses are calculated for purposes of calculating an offender's sentence.

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### 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).

**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 to convictions for misdemeanor or gross misdemeanor offenses. Courts of limited

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jurisdiction may impose a maximum of two years probation following a sentence for a non-felony offense involving domestic violence.

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 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.

Generally, the standard sentencing range is presumed to be appropriate for the typical felony case. However, the law provides that in exceptional cases, a court has the discretion to depart from the standard range and may impose an exceptional sentence below the standard range (with a mitigating circumstance) or above the range (with an aggravating circumstance). The SRA provides a list of factors that a court may consider in deciding whether to impose an exceptional sentence outside of the standard range. 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.

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#### **Summary of Substitute Bill:**

The formula for calculating an offender's score is adjusted under the SRA. For the purpose of computing an offender's score, if the present conviction is for a felony domestic violence-related offense, where domestic violence was plead and proven, an offender receives one point for each "repetitive domestic violence offense." A repetitive domestic violence offense is any of the following non-felony offenses that are domestic violence-related: Assault, Violation of a No-Contact Order, Harassment, and Stalking. The maximum period of probation that may be imposed by courts of limited jurisdiction is increased from two years to five years.

Under the SRA, a court may impose an exceptional sentence below the standard sentence range for offenses involving domestic violence if the defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense, and the offense is a response to that coercion, control, or abuse. An aggravating circumstance that permits an exceptional sentence when the offense was part of an ongoing pattern of abuse of the victim is changed to a pattern of abuse involving a victim or multiple victims.

#### **Substitute Bill Compared to Original Bill:**

The amendment restores the aggravating circumstance relating to an "offense that occurs within the sight or sound of the victim's or offender's minor children under the age of 18 years old" back to its original language as in current statute.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute 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) This bill is the result of a workgroup that convened over the summer to take a comprehensive look at domestic violence. This bill is targeting those repeat domestic violence offenders. It is hard to prosecute an offender as a first-time offender when in reality this person has a history of committing domestic violence-misdemeanor offenses. This bill will allow those prior violations for Assault, Harassment, Stalking, and Violations of a No-Contact Order to now be counted like a felony offense. The bill is not retroactive so the costs under the fiscal note will not take effect until later in future years. This bill will hold offenders accountable.

The bill as drafted allows a judge to impose an aggravating circumstance when violence is committed in front of any child. An amendment will be offered to delete that provision and restore that particular aggravating factor back to current law.

(Opposed) There is concern over the scoring of misdemeanors. Our current law has a better system in place than to start scoring misdemeanor offenses and it retains judicial discretion. Under the SRA, prosecutors can charge and file an aggravating factor where the offense involves an ongoing pattern of abuse. A judge in turn can impose an exceptional sentence. This is a better way to punish the worst offenders. Scoring misdemeanors is going to create more litigation because under this bill the domestic violence offense would have to be plead and proven. In addition, courts will have to change their practices to retain records on these domestic violence allegations. The current law strikes the appropriate balance, will not result in costs, and allows more punishment for offenders than they would otherwise get under this bill.

**Persons Testifying:** (In support) Representative Goodman, prime sponsor; and Tom McBride, Washington Association of Prosecuting Attorneys.

(Opposed) Amy Muth, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

**Persons Signed In To Testify But Not Testifying:** None.