

# HOUSE BILL REPORT

## SB 5413

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### As Passed House:

April 8, 2009

**Title:** An act relating to assault of a law enforcement officer or other employee of a law enforcement agency.

**Brief Description:** Concerning the assault of a law enforcement officer or other employee of a law enforcement agency.

**Sponsors:** Senators Eide, Kline, Swecker, Roach, Rockefeller, Shin and Marr.

### Brief History:

#### Committee Activity:

Public Safety & Emergency Preparedness: 3/17/09, 3/18/09 [DP].

#### Floor Activity

Passed House: 4/8/09, 86-9.

### Brief Summary of Bill

- Creates a one year sentencing enhancement for a person convicted of assaulting a law enforcement officer with what appears to be a firearm.

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## HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

**Majority Report:** Do pass. Signed by 7 members: Representatives Hurst, Chair; O'Brien, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Appleton, Kirby and Ross.

**Minority Report:** Do not pass. Signed by 1 member: Representative Goodman.

**Staff:** Yvonne Walker (786-7841)

### Background:

#### Assault.

A person commits Assault if he or she: (a) attempts, with unlawful force, to inflict bodily injury upon another; (b) unlawfully touches another person with criminal intent; or (c) puts

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

For example, a person is guilty of Assault in the first degree if he or she, with the intent to inflict great bodily harm:

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

Assault in the first degree is a seriousness level of XII, class A felony offense.

A person is guilty of Assault in the second degree if he or she, under circumstances not amounting to Assault in the first degree:

- intentionally assaults another and thereby recklessly inflicts substantial bodily harm;
- intentionally and unlawfully causes substantial bodily harm to an unborn quick child by intentionally and unlawfully inflicting any injury upon the mother of the child;
- assaults another with a deadly weapon;
- with intent to inflict bodily harm, administers to, or causes to be taken by another, poison or any other destructive or noxious substance;
- with intent to commit a felony, assaults another; or
- knowingly inflicts bodily harm that by design causes pain or agony equivalent to that produced by torture.

Assault in the second degree is a seriousness level IV, class B felony offense (the crime is a class A felony if committed with sexual motivation).

A person is guilty of Assault in the third degree if he or she, under circumstances not amounting to Assault in the first or second degree:

- assaults another with intent to prevent or resist the execution of any lawful process or mandate of any court officer or the lawful apprehension or detention of himself or another person;
- assaults one of several enumerated classes of persons; (e.g., law enforcement officers, firefighters, or school bus drivers);
- with criminal negligence, causes bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm;
- with criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering; or
- assaults a peace officer with a projectile stun gun.

Assault in the third degree is a seriousness level of III, class C felony offense. A first-time offender convicted of Assault in the third degree would receive a presumptive sentence range of one to three months in jail.

A person is guilty of Assault in the fourth degree if he or she assaults another under circumstances not amounting to Assault in the first, second, or third degrees. Assault in the fourth degree is a gross misdemeanor offense.

#### Sentencing Enhancements.

Under the Sentencing Reform Act, the court must impose imprisonment in addition to the standard sentencing range if specific conditions for sentencing enhancements are met. Sentencing enhancements may apply if any of the following apply: (1) the offender was armed with a firearm while committing certain felonies; (2) the offender was armed with a deadly weapon while committing certain felonies; (3) the offender committed certain felonies while incarcerated; (4) the offender committed certain drug offenses; (5) the offender committed vehicular homicide while under the influence of alcohol or drugs; or (6) the offender committed a felony crime that was committed with sexual motivation.

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.

**Summary of Bill:**

A procedure is established for determining whether an assault offense was committed with an item that appeared to be a firearm, and a new sentencing enhancement penalty is created for the conviction of such assault offenses.

In a criminal case where a special allegation has been made, if a court makes a finding of fact, or in a jury trial if the jury finds a special verdict, that: (1) an offender committed the crime of assaulting a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the offense; and (2) the underlying offense was intentionally committed with what appears to be a firearm, then the court must impose a sentence enhancement. The sentence enhancement must include a sentence of 12 months of imprisonment that is added to the offender's presumptive sentence.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** 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 is a bill to address the common use of look-alike guns used to threaten police officers during the commission of crimes. There was an incident that took place in the Federal Way area where a suspect pulled out a look-alike aero-soft gun and pointed it at an officer. The officer, fearful of his life, drew his service weapon and fired twice at the suspect but missed. The suspect was subsequently taken into custody and the aero-soft gun was recovered. There were three things that could have potentially happened in this situation. The officer could have been injured, the suspect could have been injured, or an innocent bystander could have been injured. A case like this, which causes an officer to discharge his firearm, is more serious than a typical assault charge.

Prosecutors would like the discretion to pursue a more serious penalty. This legislation does not impact the "Three Strikes and You're Out" Law, and has a very limited fiscal impact.

(Opposed) This legislation is not necessary and instances of this particular behavior are rare. First, there are avenues available for when a person is charged with an Assault in the third degree offense whereby a judge can impose an exceptional sentence. Secondly, the definition of what appears to be a weapon is vague. In criminal law, the provision of the act that states "with what appears to be a firearm" is not sufficient enough to afford a person due process. This portion of the bill should be clarified.

**Persons Testifying:** (In support) Senator Eide, prime sponsor; Brian Wilson, Federal Way Police Department; and Ian Goodhew, King County Prosecuting Attorney Office.

(Opposed) John Sinclair, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

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