

SENATE BILL REPORT

ESHB 2427

As of February 25, 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: Passed House: 2/12/10, 97-0.

Committee Activity: Judiciary: 2/23/10.

SENATE COMMITTEE ON JUDICIARY

Staff: Karen Campbell (786-7448)

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. This number is referred to as the defendant's offender score. A defendant's prior convictions for gross misdemeanor domestic violence offenses are not counted in his or her offender score.

Under the SRA, the court may not impose a sentence outside of the standard sentencing range unless it finds a basis for an exceptional sentence. 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 6th Amendment. Generally, the SRA and the points that an offender receives do not include misdemeanor or gross misdemeanor offenses.

The SRA includes a specific list of aggravating and mitigating circumstances that a court may consider before it can impose an exceptional sentence outside of the standard sentencing range. For example, an aggravating circumstance includes a domestic violence offense that

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.

was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim manifested by multiple incidents over a prolonged period of time.

Summary of Bill: The formula for calculating an offender's score is changed for domestic violence offenses. 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 crimes:
 1. Felony violation of a no-contact order or a protection order;
 2. First and Second Degree Assault, domestic violence;
 3. Felony Harassment, domestic violence;
 4. Felony Stalking, domestic violence;
 5. First Degree Burglary, domestic violence;
 6. First and Second Degree Kidnapping, domestic violence;
 7. Unlawful Imprisonment, domestic violence;
 8. First and Second Degree Robbery, domestic violence;
 9. First, Second, and Third Degree Assault, domestic violence; or
 10. First and Second Degree Arson, domestic violence.

- One point (single score) for each repetitive domestic violence offense where domestic violence was plead and proven. Repetitive domestic violence offenses include the following gross misdemeanor offenses: assault in the fourth degree, violation of a court order (no-contact order or domestic violence protection order), harassment, stalking, and the federal, out of state, tribal, military, county, or municipal equivalent of these crimes.

A felony domestic violence offense is 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. There is a long list of criminal offenses that are considered domestic violence offenses including assault in the first and second degrees, burglary, kidnapping, and unlawful imprisonment.

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

The aggravating circumstance involving an ongoing pattern of psychological, physical, or sexual abuse to a domestic violence victim is expanded to include multiple victims.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: Two points for repeat domestic violence (DV) felonies is completely appropriate. None of the scoring of DV crimes are weighted. A felony DV conviction has the same weight as a felony theft or felony drug conviction. We know from the study done by the Washington Institute for Public Policy that felony DV is the single greatest predictor of future felony violent behavior. How these offenses are scored should be related to this. For future violent behavior, felony DV behavior is enormously predictive. DUI and auto theft crimes cause people to be put away longer than DV crimes.

There can be an offender with 20 prior misdemeanor DV crimes and they don't count in that person's offender score for purposes of sentencing. These people know the RCWs - they're almost as bad as sex offenders; they know how far they can push it. These offenses need to count.

OTHER: If misdemeanor DV offenses are scored, people will be more likely to go to trial. The opportunity for people to deal with their problems early will be lost. There should be more focus and consequences at the misdemeanor level so there isn't the situation that not until a felony DV offense is committed are the misdemeanors taken seriously.

Persons Testifying: PRO: David Martin, King County Prosecutor's Office; Claire Bradley, Kitsap County Prosecutor's Office; Keith Galbraith, Family Renewal Shelter; Linda Olsen, Washington State Coalition Against Domestic Violence; Maria Cumero, citizen.

OTHER: Travis Stearns, Washington Defender Assn; Washington Association of Criminal Defense Lawyers.