

SENATE BILL REPORT

SB 5208

As of January 28, 2010

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

Brief Description: Ensuring punishment for domestic violence offenders.

Sponsors: Senators Brandland, Kline, Hargrove, Stevens, Regala, Sheldon, Marr, Kohl-Welles, Tom, Kilmer and Shin; by request of Attorney General.

Brief History:

Committee Activity: Judiciary: 1/23/09, 2/17/09 [DPS-WM].

Ways & Means: 1/26/10.

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5208 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kline, Chair; Regala, Vice Chair; McCaslin, Ranking Minority Member; Hargrove, Kohl-Welles, Roach and Tom.

Staff: Lidia Mori (786-7755)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Richard Ramsey (786-7412)

Background: The presumptive standard sentencing range for ranked felonies is determined by the seriousness of the offense and the offender's criminal history (offender score). Misdemeanors generally are not included in offender score calculations. The rules for scoring prior convictions are contained in statute and they specify the correct number of points to be assigned for prior convictions depending on the current offense.

A court may impose a sentence above or below the standard range based upon aggravating or mitigating factors. Aggravating factors posing questions of fact must be submitted to a jury and proved beyond a reasonable doubt. RCW 9.94A.535 provides a list of factors the court may consider in deciding whether to impose an exceptional sentence. One of those aggravating factors is whether the offense was part of an ongoing pattern of psychological,

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physical, or sexual abuse of a victim manifested by multiple incidents over a prolonged period of time.

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.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Second Substitute): The formula for calculating an offender's score 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 crimes:
 1. felony violation of a no-contact order or protection order (first and second degree Assault);
 2. felony Harassment domestic violence;
 3. felony Stalking domestic violence;
 4. first degree Burglary domestic violence;
 5. first and second degree Kidnapping domestic violence;
 6. Unlawful Imprisonment domestic violence;
 7. first and second degree Robbery domestic violence;
 8. first, second, and third degree Assault domestic violence; and
 9. first and second degree Arson domestic violence.
- one point (single score) for each serious domestic violence offense where domestic violence was plead and proven. "Serious domestic violence offenses" include: non-felony domestic violence Assault, non-felony domestic violence violation of a court order (no-contact order or domestic violence protection order), non-felony domestic violence Harassment, and non-felony domestic violence Stalking.

Serious 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.

A Felony Domestic Violence offense is defined as including:

- but is not limited to any of the following crimes when committed by one family or household member against another: first, second, third, and fourth degree Assault; Drive-by Shooting; Reckless Endangerment; Coercion; first and second degree Burglary; first and second degree Criminal Trespass; first, second, and third degree Malicious Mischief; first and second degree Kidnapping; Unlawful Imprisonment; violation of the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going onto the grounds of or entering a residence, workplace, school, or daycare, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location; first and second degree Rape; Residential Burglary; Stalking; and Interference with the reporting of domestic violence; and

- 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 stalking of one family or household member by another family or household member.

One of the aggravating circumstances is amended to include a current offense that is involved in domestic violence where the offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended First Substitute): Changes to the Judiciary Committee Recommended First Substitute made to the Proposed Second Substitute include:

- clarifying that the bill will only go into effect for new domestic violence related crimes committed after August 1, 2011;
- deleting no contact order offenses and residential burglary offenses (that are domestic violence-related) off the list of offenses that will now be scored one point on the Sentencing Reform Act of 1981 (SRA) grid. These offenses are already scored one point under current statute; and
- adding Assault 1 offenses that are domestic violence-related to the list of offenses that are to be double scored on the SRA grid. The original bill as drafted only included Assault 2 and Assault 3 offenses as double score-able offenses.

Appropriation: None.

Fiscal Note: Requested on January 22, 2010. A fiscal note for HB 2427, a companion bill, is available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony (Judiciary): PRO: The fact that a person can have committed multiple misdemeanor domestic violence (DV) offenses and they are not counted when the person commits felony DV offenses cannot be what was intended in the law. This bill allows us to take a look at a chronic violent offender with multiple victims. This type of violence tends to escalate. When it gets to the felony level, the court should be able to look at the entire criminal history in sentencing. Only a small number of offenders will see their offender score increase. DV offenders are cunning and manipulative; they know the RCWs and commit misdemeanor after misdemeanor DV offenses, victim after victim. Repeat DV offenders must be held accountable, and judges should be able to use their discretion to sentence the person based on the whole picture. This bill proposes not just scoring misdemeanors but also multiplying felonies. There is a recidivist component to every other aspect of the SRA except for DV and that's simply unfair. The bill modifies the aggravating factor so that it applies in situations with different victims. Many victims, due to the state of the law, feel not only victimized by their abuser but also by law enforcement, the courts, and prosecutors. They see abusers not receiving real sentences.

CON: Courts can already take into account prior misdemeanors. Judges have discretion to look at individual circumstances and this bill would take that away. The DV definition in statute is based on relationship status.

OTHER: Concerns are with the fiscal impact of this bill. Would like to have shelter funding and legal advocacy funding and would hate to see the fiscal note for this bill hurt those priorities. No problem with the underlying policy of the bill. The Sentencing Guidelines Commission (SGC) supports the modification to the aggravating circumstance portion of this bill. The SGC has concerns about the complex approach to multiple scoring in this bill and the fact that misdemeanor offenses are being scored. From the experience of counting misdemeanors in felony traffic offense situations, it is very cumbersome because the information sharing between the felony system and the misdemeanor system is problematic.

Persons Testifying (Judiciary): PRO: Senator Brandland, prime sponsor; Chris Johnson, Attorney General's Office; Maria Cumerio, Trese Todd, Thrivers Action Group; David Martin, King County Prosecutor's Office; Jennifer Weiler, Thurston County Prosecutor's Office; Susan Adams, Crystal Judson Family Justice Center.

CON: Daron Morris, Washington Criminal Defense Lawyers, Washington Defender Association.

OTHER: Carey Morris, Washington State Coalition Against Domestic Violence; Jean Soliz Conklin, SGC.