

HOUSE BILL REPORT

HB 2722

As Reported by House Committee On:
Early Learning & Human Services

Title: An act relating to arrest of sixteen and seventeen year olds for domestic violence assault.

Brief Description: Concerning placement of sixteen and seventeen year olds arrested for domestic violence assault.

Sponsors: Representatives Roberts and Kagi.

Brief History:

Committee Activity:

Early Learning & Human Services: 1/30/14 [DPS].

Brief Summary of Substitute Bill

- Increases the age of mandatory arrest for domestic violence assault from age 16 to age 18.
- Specifies that police officers may arrest individuals ages 16 and 17 for domestic violence assault and must consider certain criteria in determining whether to arrest them.

HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Kagi, Chair; Freeman, Vice Chair; Walsh, Ranking Minority Member; Goodman, Ortiz-Self, Roberts, Sawyer, Senn and Zeiger.

Minority Report: Do not pass. Signed by 4 members: Representatives Scott, Assistant Ranking Minority Member; Fagan, MacEwen and Young.

Staff: Luke Wickham (786-7146).

Background:

A police officer must arrest and take into custody certain individuals without a warrant when the officer has probable cause to believe that the person committed specific crimes. These

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specific crimes include violations of a protection order, restraining order, no-contact order or foreign protection order, and persons 16 years or older who assaulted a family or household member.

Assault.

There are four assault categories ranging from first through fourth degree Assault. First through third degree Assault are felony offenses, while fourth degree Assault is a gross misdemeanor. Fourth degree Assault is defined as an assault not amounting to first degree, second degree, third degree, or Custodial Assault. Because Washington's criminal code does not define assault, the courts apply a common law definition. That common law definition includes:

- an attempt, with unlawful force, to inflict bodily injury upon another;
- unlawful touching with criminal intent; and
- putting another in apprehension of harm whether or not the actor intends to inflict or is capable of inflicting that harm.

A touching may be unlawful because it was not legally consented to nor otherwise privileged, and was either harmful or offensive.

Domestic Violence.

Certain crimes, including Assault, are designated domestic violence crimes when committed by one family or household member against another. Family or household members include spouses, former spouses, persons who have a child in common, adults related by blood or marriage, adults who are residing together or who have resided together in the past, persons 16 years of age or older who are residing together or who have resided together in the past who have or have had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

Summary of Substitute Bill:

The age of mandatory arrest for domestic violence assault is increased from age 16 to age 18.

Police officers may arrest individuals who are age 16 or 17 and within the preceding four hours have assaulted a family or household member and the officer believes a felony assault occurred, an assault occurred resulting in bodily injury, or that any physical action which was intended to cause another person to reasonably fear for imminent bodily injury or death occurred.

Specific criteria is provided that police officers must consider in determining the arrest of 16- and 17-year-olds for assault involving a family or household member.

Substitute Bill Compared to Original Bill:

The substitute bill increases the age of mandatory arrest for domestic violence assault from age 16 to age 18. The substitute bill specifies that police officers may arrest a person who is

age 16 or 17 and, within the preceding four hours, has assaulted a family or household member and the officer believes: a felony assault has occurred; an assault has occurred which resulted in bodily injury; or that any physical action has occurred which was intended to cause another person to reasonably to fear imminent serious bodily injury or death. Specific criteria that police officers must consider in determining arrest is provided.

Appropriation: None.

Fiscal Note: Requested on January 31, 2014.

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 - from testimony on HB 2455, which is identical to HB 2722 except for the title, on January 29, 2014) The current domestic violence law is rigid. This bill gives police officers discretion regarding arrests of 16- and 17-year-olds in domestic violence situations. In certain places there may be options for youth to be placed in alternative nonsecure locations, but other locations may not have access to these alternatives. It is important that police officers have discretion in an arrest. For fourth degree Assault, parents will sometimes call the police to initiate a response and then are surprised when the youth are required to be arrested and detained. Fourth degree Assault is the number one charge for youth admitted to detention and make up one-third of the youth admitted to detention. Police officers should have discretion whether to arrest a youth in these circumstances. There are domestic violence situations where arrest is necessary and should happen. Report of an assault is grounds for an officer to determine an arrest should occur. However, when there is a raging fight between siblings, or parents and children, and an officer responds, an officer is required to make an arrest. In most jurisdictions, there is a direct filing of charges. In 1995 when this law was enacted, the Legislature was responding to a problem that we were avoiding for a long time, violence between intimate partners. This was not supposed to affect situations where a young woman pushes over a bowl of cereal in the direction of her mother.

(In support with concerns - from testimony on HB 2455, which is identical to HB 2722 except for the title, on January 29, 2014) Police officers should have some discretion in determining whether to arrest a 16- or 17-year-old under these circumstances. There is a concern that officers do not have discretion to make an arrest in misdemeanor situations. There should be another paragraph adding discretionary arrest language giving officers direction regarding when to arrest a 16- or 17-year-old. Detaining a perpetrator may be the respite that a victim needs.

(Opposed - from testimony on HB 2455, which is identical to HB 2722 except for the title, on January 29, 2014) Frequently a single mother who has been able to divorce herself from an abusive husband has a son who then perpetrates abuse. Many of these families live in terror and it is important to make sure these situations are taken seriously. Many people call the police and report that nothing happens. Changing the age from 16 to 18 sounds like a

simple change, but it has a dramatic effect. It is important for perpetrators to have consequences immediately. By making this change, you push the necessary intervention out longer and things may escalate. It is important for individuals to go to detention immediately so that they can change. Detention leads to greater remorse and helps individuals stop perpetrating violent behavior. This is a safety issue.

Persons Testifying: (In support - from testimony on HB 2455, which is identical to HB 2722 except for the title, on January 29, 2014) Representative Roberts, prime sponsor; Sarah Walker, University of Washington; and Russ Haugen, Washington Association of Prosecuting Attorneys.

(In support with concerns - from testimony on HB 2455, which is identical to HB 2722 except for the title, on January 29, 2014) Grace Hwang, Washington State Coalition Against Domestic Violence.

(Opposed - from testimony on HB 2455, which is identical to HB 2722 except for the title, on January 29, 2014) Mary Taylor and Lily Anderson, King County Step Up Program.

Persons Signed In To Testify But Not Testifying: None.