
**Public Safety & Emergency Preparedness
Committee**

HB 2427

Brief Description: Ensuring punishment for domestic violence offenders.

Sponsors: Representatives Pearson, Hurst, Bailey, Goodman, Kirby, Chandler, Herrera, O'Brien, Warnick, Ross, Condotta, Dammeier, Shea, Klippert, Smith, Walsh, Parker, Jacks, Blake, Rodne and Williams; by request of Attorney General.

Brief Summary of Bill

- Double scores prior felony offenses that are domestic violence-related and single scores prior non-felony offenses that are domestic violence-related for purposes of calculating an offender's sentence.

Hearing Date: 1/12/10

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 felony convictions. The number of points an offender receives for current and prior felonies varies according to certain rules.

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.

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.

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.

Protection Orders. Protection orders can be issued by a court in civil proceedings. There are two types of protection orders authorized by statute: domestic violence protection orders and anti-harassment protection orders. A victim of domestic violence can obtain a domestic violence protection order against a respondent. The order can provide several types of relief including electronic monitoring, batterer's treatment, and a requirement that the respondent refrain from contacting the petitioner. Violation of a domestic violence protection order is a gross misdemeanor unless the respondent has two prior convictions for violating a domestic violence protection order or other similar federal or out-of-state order, in which case the violation is a class C felony.

No-Contact Orders. No-contact orders can be issued by a court in a criminal proceeding. The court generally issues no-contact orders when a defendant is released from custody prior to trial or as part of the defendant's sentence. There are two types of prosecutions for which no-contact orders are statutorily authorized: prosecutions for criminal harassment and prosecutions for crimes involving domestic violence. A law enforcement officer must enforce a no-contact order issued as part of a prosecution for a crime involving domestic violence. Violation of such a no-contact order is a gross misdemeanor, unless the defendant has two previous convictions for violating a domestic violence protection order or other similar federal or out-of-state order, in which case the violation is a class C felony.

Restraining Orders. As part of a civil proceeding, a court may also issue a restraining order that enjoins the person subject to the order from contacting another party. Such restraining orders can be permanent or temporary. A court can grant a permanent or temporary restraining order as part of a divorce proceeding, a non-parental action for child custody, an action involving the abuse of a child or an adult dependent person, or a paternity action. A court can grant a temporary restraining order (and not a permanent restraining order) in connection with proceedings where there have been allegations of abuse of a child or a dependent adult person. A violation of a restraining order issued as part of a divorce proceeding or an action involving the abuse of a child or an adult person is a misdemeanor. A violation of a restraining order issued as part of a non-parental action for child custody or a paternity action is a gross misdemeanor.

Foreign Protection Orders. A foreign protection order is an injunction or similar order relating to Domestic Violence, Harassment, sexual abuse, or Stalking issued by a court of another state, territory, or possession of the United States, the Commonwealth of Puerto Rico, the District of Columbia, a United States military tribunal, or a tribal court. A violation of a foreign protection order is generally a gross misdemeanor, but becomes a class C felony in the following three circumstances: (1) the violation is an assault that does not amount to assault in the first or second degree; (2) the violation involved conduct that is reckless and creates a substantial risk of death or serious physical injury to another person; or (3) the offender has at least two prior convictions for violating the provisions of a no-contact order, a domestic violence protection order, or a comparable federal or out-of-state order.

Aggravating Circumstances.

Under the SRA, the court must impose imprisonment in addition to the standard sentencing range if specific conditions for sentencing enhancements are met. 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. Some aggravating circumstances that must be found by a jury beyond a reasonable doubt include:

- The defendant committed the offense shortly after being released from incarceration.
- The defendant committed a current sex offense, has a history of sex offense, and is not amenable to treatment.
- The defendant committed the offense against a victim who was acting as a Good Samaritan.
- The current offense involved domestic violence and the offense was part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time.

Summary of Bill:

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.) second and third degree Assault domestic violence; and
 - (9.) first and second degree Arson domestic violence.
- One point (single score) for each offense involving one of the following crimes:
 - (1.) felony violation of a no-contact order (two prior misdemeanor offenses)
 - (2.) residential Burglary domestic violence
 - (3.) 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 the 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.
- 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.

Aggravating Circumstance.

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.

Appropriation: None.

Fiscal Note: Requested on January 5, 2010.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.