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## Judiciary Committee

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### HB 2778

**Title:** An act relating to domestic violence.

**Brief Description:** Concerning domestic violence.

**Sponsors:** Representatives Goodman, Kessler, Santos, Darneille, Maxwell, Kenney, Kagi, Williams, Rolfes, Appleton, Hudgins, Ericks, Morrell, McCoy, Seaquist, Green, O'Brien, Carlyle, Roberts, Pearson, Nelson and Simpson.

#### Brief Summary of Bill

- Makes a number of changes to the laws relating to domestic violence, including changes in the areas of law enforcement and arrest, no-contact and protection orders, firearms possession, sentencing reforms, treatment and services for perpetrators and victims, and human remains disposition.

**Hearing Date:** 1/18/10

**Staff:** Courtney Barnes (786-7194).

#### Background:

Domestic violence includes certain crimes when committed by one family or household member against another. Those crimes include assault, rape, residential burglary, stalking, criminal trespass, malicious mischief, kidnapping, unlawful imprisonment, and violation of a no-contact, restraining, or protection order prohibiting one person from knowingly coming within a certain distance from another person.

#### Law Enforcement and Arrest Provisions

Generally, a police officer is required to arrest a person 16 years of age or older if the officer has probable cause to believe that the person has assaulted a family or household member within the four hours preceding arrest. The officer is required to arrest the person whom the officer

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*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.*

believes is the primary physical aggressor. In making this determination, the officer must consider certain factors, such as the comparative extent of injuries inflicted and the history of domestic violence between the parties.

### No-Contact Orders

Current law requires a defendant arrested or cited for an offense involving domestic violence to appear in person before the court. At the time of appearance, the court is required to determine the necessity of imposing a criminal no-contact order or other conditions of pretrial release.

Upon arrest or conviction of an offense involving domestic violence, a court is authorized to enter a no-contact order prohibiting a defendant from contacting the protected party. Upon entry of a no-contact order by a court, the order must be issued in writing as soon as possible. No-contact orders can be issued without either the request or permission of the protected party.

### Protection Orders

A victim of domestic violence who is 16 years of age or older may petition the court for a civil protection order. A court issuing a protection order may impose a variety of conditions, such as restraining the respondent from having contact with the victim.

### Firearms Possession

Under federal law, certain qualified protection, no-contact, and restraining orders prohibit a person who is subject to an order from possessing a firearm. These orders include those that: (1) were issued after notice and an opportunity to appear; and (2) restrain the person from committing certain criminal acts against an intimate partner.

### Sentencing Reforms

Under the Sentencing Reform Act (SRA), a court may impose a sentence outside the standard sentence range for a felony offense if it finds substantial and compelling reasons justifying an exceptional sentence. The SRA includes a list of aggravating and mitigating circumstances that may be considered.

A court imposing a sentence upon conviction of a misdemeanor or gross misdemeanor is not bound by the SRA. Courts of limited jurisdiction may impose a maximum of two years probation following a sentence for a non-felony offense involving domestic violence.

### Treatment/ Services for Perpetrators and Victims

The Department of Social and Health Services (DSHS) certifies domestic violence perpetrator programs that accept perpetrators of domestic violence into treatment to satisfy court orders. The DSHS also certifies programs that represent themselves as treating domestic violence perpetrators. The DSHS has the authority to adopt rules and minimum standards for domestic violence perpetrator programs.

The Washington Crime Victims' Compensation Program administered by the Department of Labor and Industries provides benefits to victims of criminal acts. Generally, persons injured by a criminal act in Washington are eligible to receive benefits if:

- the criminal act for which compensation is being sought is punishable as a gross misdemeanor or felony;
- the crime was reported to law enforcement within one year of its occurrence or within one year from the time a report could reasonably have been made; and
- the application for crime victims' benefits is made within two years after the crime was reported to law enforcement or the rights of the beneficiaries or dependents accrued.

### Human Remains Disposition

Washington law governs who has the right to control the disposition of a person's remains. Absent a prearrangement filed by the decedent, the right to control the disposition of the remains vests in the following order:

1. the surviving spouse or registered domestic partner;
2. the surviving adult children;
3. the surviving parents of the decedent;
4. the surviving siblings of the decedent; or
5. a person acting as a representative of the decedent under the signed authorization of the decedent.

### **Summary of Bill:**

#### Law Enforcement and Arrest Provisions

For the purposes of identifying the primary physical aggressor, the arresting officer must consider the history of domestic violence of each person involved, including whether the conduct was part of an ongoing pattern of abuse.

When funded, the Washington Association of Sheriffs and Police Chiefs (WASPC) is required to convene a model policy work group. The work group must develop a model policy to address the reporting of domestic violence to law enforcement in cases where the victim is unable or unwilling to make a report in the jurisdiction where the alleged crime occurred. The model policy must include policies and procedures related to collecting and securing evidence and creating interlocal agreements between law enforcement agencies.

#### No-Contact Orders

At the time of the defendant's first appearance before the court for an offense involving domestic violence, the prosecutor must provide the court with the defendant's criminal history occurring in Washington and in any other state, as well as the defendant's history of no-contact and protection orders. If available, the prosecutor must also provide the court with the defendant's prior criminal history occurring in any tribal jurisdiction.

By January 1, 2011 the Administrative Office of the Courts (AOC) must develop a pattern form for all no-contact orders issued for offenses involving domestic violence. A no-contact order issued by the court must substantially comply with the pattern form developed by the AOC.

All courts are required to develop policies and procedures to grant victims a process to modify or rescind a no-contact order by January 1, 2011. The AOC is required to develop a model policy to assist the courts in developing procedures for implementing this requirement.

### Protection Orders

Any person 13 years of age or older may petition the court for a domestic violence protection order if he or she is the victim of violence in a dating relationship and the respondent is 16 years of age or older.

In issuing a domestic violence protection order, courts may restrain the respondent from cyber stalking or monitoring the actions, location, or communication of the victim by using wire or electronic technology. This provision also applies to ex parte temporary orders for protection in cases of domestic violence.

Courts issuing protection orders for domestic violence, sexual assault, and harassment may exercise personal jurisdiction over a nonresident individual if:

- the individual is personally served in Washington;
- the individual submits to jurisdiction by consent, entering a general appearance, or filing a responsive document having the effect of waiving any objection to consent to personal jurisdiction;
- the act or acts of the individual or individual's agent giving rise to the petition or enforcement for an order for protection either: (a) occurred within this state; or (b) occurred outside this state and are part of a continuing course of conduct having an adverse effect on a person in this state;
- as a result of the acts of the individual, the petitioner resides in this state; or
- there is any other basis consistent with Washington's long-arm jurisdiction statute.

### Reconciling No-Contact and Protection Orders

By December 1, 2011 the AOC must develop guidelines for all courts to establish a process to reconcile duplicate or conflicting no-contact or protection orders issued in Washington. The guidelines must also include a procedure for no-contact and protection order data sharing between Washington courts. By January 1, 2011 the AOC must provide a report to the Legislature concerning the progress made to develop these guidelines.

### Firearms Possession

The crime of unlawful possession of a firearm in the second degree is amended to add two new circumstances of when a person is prohibited from possessing a firearm, including:

- if the person has been convicted of a misdemeanor crime of harassment, if committed against a family or household member; and
- if the person is subject to a protection, no-contact, or restraining order that: (1) was issued after notice and an opportunity to appear; and (2) restrains the person from causing physical harm or bodily injury, assaulting, sexually assaulting, molesting, harassing, threatening, or stalking, a family or household member of the person, or a minor child of the family or household member.

When entering a no-contact order or order for protection in cases of domestic violence that restrains a respondent from committing certain criminal acts against a family or household member, a court must require the respondent to surrender any firearm or other dangerous weapon and prohibit the respondent from obtaining or possessing a firearm or other dangerous weapon.

The AOC must convene a work group to address the issue of transmitting information regarding the revocation of concealed pistol licenses upon the entry of certain no-contact and protection orders. The work group must review the methods currently used to transfer information between the courts, county clerks, prosecutors, the Department of Licensing, the Washington State Patrol, and local law enforcement regarding the revocation of concealed pistol licenses.

### Sentencing Reforms

The aggravating circumstance under the SRA that requires an offense involving domestic violence to have occurred within sight or sound of the victim's or offender's minor children is modified to remove the requirement that the minor children be children of the victim or offender. The aggravating circumstance that includes offenses involving domestic violence when the offense was part of an ongoing pattern of abuse of the victim manifested by multiple incidents over a prolonged period of time is changed to include a pattern of abuse involving a victim or multiple victims.

A mitigating circumstance is added to the SRA to allow a court to impose an exceptional sentence below the standard sentence range if the current offense involved domestic violence and the defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense, and the offense is a response to that coercion, control, or abuse.

In sentencing for an offense involving domestic violence, courts of limited jurisdiction must consider, among other factors, whether:

- the defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense and the offense is a response to that coercion, control, or abuse;
- 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; and
- the offense occurred within sight or sound of minor children under the age of 18.

During sentencing for a non-felony offense involving domestic violence, the prosecutor must provide courts of limited jurisdiction with the defendant's criminal history occurring in Washington and in any other state, as well as the defendant's history of no-contact and protection orders. If available, the prosecutor must also provide the court with the defendant's prior criminal history occurring in any tribal jurisdiction.

For non-felony offenses involving domestic violence, the maximum period of probation that may be imposed by courts of limited jurisdiction is increased from two years to five years.

### Treatment/ Services for Perpetrators and Victims

Any program that provides domestic violence treatment to perpetrators of domestic violence must be certified by the DSHS and meet minimum standards for domestic violence treatment purposes. The DSHS may conduct on-site monitoring visits as part of its plan for certifying domestic violence perpetrator programs and monitoring implementation of the DSHS' rules. Treatment programs are required to cooperate with the DSHS in the monitoring visit, including providing program and management records requested by the DSHS to determine the program's compliance with the minimum certification qualifications and rules.

Under the Crime Victims' Compensation Program, a child may receive benefits, including counseling and treatment for distress arising from witnessing an act of domestic violence, if the child:

- is under the age of 18;
- resides with a person that is a victim of a domestic violence offense; and
- was a direct witness by sight or sound to the domestic violence offense.

In addition, to be eligible for crime victims' compensation benefits, the domestic violence offense must be reported to law enforcement within 12 months of its occurrence or within 12 months of the time when a report could have reasonably been made. This eligibility for benefits applies to domestic violence offenses reported after July 1, 2010.

#### Human Remains Disposition

A person who has been arrested for or charged with first or second degree murder, homicide by abuse, or first or second degree manslaughter by reason of the death of the decedent is prohibited from controlling the disposition of the decedent's remains. The right to control the disposition vests in an eligible person in the next applicable class listed in statute.

**Appropriation:** None.

**Fiscal Note:** Requested on 1/11/2010.

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