

HOUSE BILL REPORT

EHB 1632

As Passed House:
March 2, 2015

Title: An act relating to domestic violence.

Brief Description: Concerning domestic violence.

Sponsors: Representatives Goodman, Klippert, Orwall, Hayes, Jinkins and Wylie.

Brief History:

Committee Activity:

Public Safety: 1/30/15, 2/6/15 [DP].

Floor Activity:

Passed House: 3/2/15, 97-0.

Brief Summary of Engrossed Bill

- Counts two points for each prior conviction of Assault of a Child or Criminal Mistreatment where those offenses involve domestic violence when calculating an offender score for a present conviction for a felony domestic violence offense.
- Elevates the crime of Assault in the fourth degree involving domestic violence from a gross misdemeanor to a class C felony when a person has two or more prior adult convictions for Assault involving domestic violence within 10 years.
- Limits the crime of felony Assault in the fourth degree to circumstances involving assault committed against a spouse, former spouse, current or former dating partner, or against a person with whom the defendant has a child in common.
- Permits a sheriff to waive fees associated with service of a writ of habeas corpus that was issued for the return of a child when the person who was granted the writ is, by reason of poverty, unable to pay the costs.

HOUSE COMMITTEE ON PUBLIC SAFETY

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.

Majority Report: Do pass. Signed by 8 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Griffey, Pettigrew and Wilson.

Staff: Cassie Jones (786-7303).

Background:

Offender Score for Felonies Involving Domestic Violence.

The sentence imposed for a felony crime will depend on the seriousness level of the offense and the defendant's offender score. The offender score may vary from zero to nine plus points depending on five factors: (1) the number of prior criminal convictions or juvenile dispositions; (2) the relationship between any prior offense(s) and the current offense of conviction; (3) the presence of other current convictions; (4) the offender's community custody status at the time the crime was committed; and (5) the length of the offender's crime-free behavior between offenses.

For a present felony domestic violence conviction, the following felony offenses involving domestic violence currently count double, or two points, towards the offender score:

- Felony Domestic Violence Harassment;
- Felony Domestic Violence Stalking;
- Burglary in the first degree;
- Kidnapping in the first degree;
- Kidnapping in the second degree;
- Unlawful Imprisonment;
- Robbery in the first degree;
- Robbery in the second degree;
- Assault in the first degree;
- Assault in the second degree;
- Assault in the third degree;
- Arson in the first degree; and
- Arson in the second degree.

Domestic Violence is defined as: (a) physical harm, bodily injury, assault or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking of one family or household member by another family or household member.

Crimes Against Persons.

A crime may be designated in statute as a crime against a person. If so designated, at sentencing for a crime against a person, the court may order up to one year of community custody if the defendant is sentenced to one year or less in confinement and the court must order one year of community custody if the defendant is sentenced to the Department of Corrections. Convictions for crimes against persons cannot be vacated from an offender's record.

Assault in the Fourth Degree.

Assault in the fourth degree is a gross misdemeanor, punishable by up to 364 days in jail and a \$5,000 fine.

Fees for Writs of Habeas Corpus.

"Habeas corpus" is Latin and literally means "you have the body." The superior and appellate courts may grant writs of habeas corpus in favor of parents, guardians, spouses or domestic partners, and next of kin, to enforce the rights, and for the protection of children and persons who are incompetent. Whenever it appears that the person that is the subject of the writ will be carried out of the jurisdiction of the court, or will suffer irreparable injury, before compliance with the writ may be enforced, the court may also issue a warrant directing the sheriff to take the person that is the subject of the writ and bring him or her immediately before the court.

Once issued by the court, the writ (and any warrant) is brought to the sheriff to be served by delivery on the person who is alleged to be illegally holding the person that is the subject of the writ. The sheriff is also tasked with filing the return. The fees that the sheriff must collect for official services are set forth in statute. These include fees that must be charged and collected for service of writs, warrants, making returns, and actual and necessary mileage. There are also fees specified in statute with respect to what courts must charge for various filings. The chapter governing writs of habeas corpus includes a specific provision allowing an impoverished person seeking a writ of habeas corpus, but unable to pay the fees, to seek a waiver of court fees and permitting, but not requiring, the court to waive such fees.

Summary of Engrossed Bill:

Offender Score for Felonies Involving Domestic Violence.

For a present felony domestic violence conviction, the following felony offenses involving domestic violence are included among those that currently count double, or two points, towards the offender score:

- Assault of a Child in the first degree;
- Assault of a Child in the second degree;
- Assault of a Child in the third degree;
- Criminal Mistreatment in the first degree; or
- Criminal Mistreatment in the second degree.

Assault in the Fourth Degree.

Assault in the fourth degree involving domestic violence is a class C felony, punishable by up to five years in prison and a \$10,000 fine, if the person has two or more prior adult convictions within 10 years for any of the following crimes involving domestic violence:

- Assault in the first degree;
- Assault in the second degree;
- Assault in the third degree; or
- Assault in the fourth degree.

Felony Assault in the fourth degree involving domestic violence is categorized as a crime against a person.

Fees for Writs of Habeas Corpus.

Sheriffs are permitted, but not required, to waive fees associated with service of a writ of habeas corpus that was issued for the return of a child when the person who was granted the writ is, by reason of poverty, unable to pay the cost of service.

Felony Assault in the fourth degree is limited to circumstances involving the crime of felony Assault in the fourth degree to circumstances involving assault committed against a spouse, former spouse, current or former dating partner, or against a person with whom the defendant has a child in common. This limitation also applies to the prior convictions that count toward felony Assault in the fourth degree.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill raises the penalty for repeat domestic violence offenders. A third offense of Assault in the fourth degree with a domestic violence designation is very serious. Very often offenses are plead down to Assault in the fourth degree. A third or subsequent offense is raised to a felony. This will not mean necessarily more confinement, but supervision. Assault of a child with a domestic violence designation is not counted the same as assault of an adult with a domestic violence designation. This bill equates them through double scoring. In addition, some women's children are abducted by their partner. They can seek a writ of habeas corpus, but may not be able to afford the sheriff's fees for service. Sheriffs have no discretion to waive the cost of writs. This bill would allow the sheriffs to waive the fees in cases of poverty.

Our state has a serious problem with domestic violence recidivism. Repeat domestic violence offenders do untold amounts of damage to victims and their children and the broader community. Domestic violence offenders are also committing lots of other crimes of violence outside of their home. Domestic violence is a leading cause of violent and non-violent recidivism. Washington already has a policy of making a third no-contact order violation a felony; this bill extends that policy to misdemeanor assault involving domestic violence.

(In support with concerns) Many survivors of domestic violence have challenges enforcing court orders when an abuser refuses to return the children; section 5 of the bill addresses this. There are concerns with making a third Assault conviction a felony. The policy is both too broad and too narrow. There is no time limit for when the prior assaults occurred. The offenses may be 30 years apart. The policy will pick up cases among siblings and other family relationships outside intimate partner relationships. Juvenile adjudications should not be counted toward the felony. The bill is too narrow in that it only covers fourth degree assault. It does not cover other misdemeanors such as harassment that involves domestic violence.

(Opposed) None.

Persons Testifying: (In support) Representative Goodman, prime sponsor; and David Martin, King County Prosecuting Attorney's Office.

(In support with concerns) Grace Huang, Washington State Coalition Against Domestic Violence.

Persons Signed In To Testify But Not Testifying: None.