

# SENATE BILL REPORT

## SHB 1632

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As of March 1, 2016

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

**Brief Description:** Concerning domestic violence.

**Sponsors:** House Committee on Public Safety (originally sponsored by Representatives Goodman, Klippert, Orwall, Hayes, Jinkins and Wylie).

**Brief History:** Passed House: 2/12/16, 91-2.

**Committee Activity:** Law & Justice: 2/26/16.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Lindsay Erickson (786-7465)

**Background:** Domestic Violence. Domestic violence (DV) is defined as (1) physical harm, bodily injury, assault or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (2) sexual assault of one family or household member by another; or (3) stalking of one family or household member by another family or household member.

Assault in the Fourth Degree. A person is guilty of Assault in the fourth degree if, under circumstances not amounting to Assault in the first, second, or third degree, or Custodial Assault, the person assaults another. Assault in the fourth degree is a gross misdemeanor, punishable by up to 364 days in jail and a \$5,000 fine.

Repetitive Domestic Violence and Crimes of Harassment. "Repetitive domestic violence offense" means: Assault in the fourth degree involving DV; Harassment involving DV; Stalking involving DV; a violation of a no-contact order involving DV; or a violation of a civil protection order involving DV.

Crimes of harassment include: Harassment; Malicious Harassment; Telephone Harassment; Assault; Assault of a Child; Reckless Endangerment; Extortion; Coercion; Burglary; Criminal Trespass; Malicious Mischief; Kidnapping; Unlawful Imprisonment; Rape; Indecent Liberties; Rape of a Child; Child Molestation; Stalking; Cyberstalking; and violation of a temporary, permanent, or final protective order.

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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.*

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.

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 offenses 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, adult prior convictions for the following felony offenses involving domestic violence currently count double, or two points, toward the offender score:

- felony violation of a no-contact or protection order;
- felony DV harassment;
- felony DV stalking;
- burglary in the first degree;
- kidnapping in the first degree and second degree;
- unlawful imprisonment;
- robbery in the first degree and second degree;
- assault in the first degree, second degree, and third degree; and
- arson in the first degree and second degree.

If a felony offense does not have a designated seriousness level under the SRA, the maximum period of confinement is one year regardless of the class of felony. These offenses are referred to as unranked felonies.

Collection of DNA from Offenders. The Washington State Patrol (WSP) operates and maintains a deoxyribonucleic acid (DNA) identification system. Biological samples must be collected from certain convicted offenders, which are then used for analysis in the DNA identification system. Biological samples are collected from any person convicted of a felony, any person who is required to register as a sex or kidnapping offender, and any person convicted of the following misdemeanors and gross misdemeanors:

- Assault in the fourth degree with Sexual Motivation;
- Communication with a Minor for Immoral Purposes;
- Custodial Sexual Misconduct in the second degree;
- Failure to Register as a sex or kidnapping offender;
- Harassment;
- Patronizing a Prostitute;
- Sexual Misconduct with a Minor in the second degree;
- Stalking; and
- Violation of a Sexual Assault protection order.

Domestic Violence Perpetrator Treatment. Washington law provides that a court may order a defendant - or respondent - to participate in a DV perpetrator treatment program when he or she is convicted of a DV offense or is found to have committed DV for the purposes of a domestic violence protection order. State law provides minimum requirements for the goals and curriculum of DV treatment programs and directs the Department of Social and Health Services to adopt rules for the certification and regulation of individual programs. Certified DV perpetrator treatment programs are provided by private entities.

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 the person immediately before the court. The writ is brought to the sheriff to be served on the person who is alleged to be illegally holding the person that is the subject of the writ. The sheriff must collect for official services, which includes fees charged and collected for service of writs, warrants, making returns, and actual and necessary mileage.

**Summary of Bill:** Felony Assault in the Fourth Degree. Assault in the fourth degree involving DV is an unranked 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 DV:

- Assault in the first degree, second degree, and third degree;
- repetitive DV offense;
- crime of Harassment; or
- an out-of-state comparable offense.

Prior convictions elevating an Assault in the fourth degree offense to a felony are limited to those occurring after the effective date of the bill. Felony Assault in the fourth degree is limited to circumstances involving assault committed against a spouse, former spouse, domestic partner, former domestic partner, current or former dating partner, or against a person with whom the defendant has a child in common. This also applies to the prior convictions counting toward felony Assault in the fourth degree. Felony Assault in the fourth degree is categorized as a Level 4 offense and a Crime Against a Person.

Offender Scoring. For a present felony DV conviction, the following felony offenses involving DV are included among those that count double, or two points, towards an 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; and Criminal Mistreatment in the second degree.

Collection of DNA from Offenders. Biological samples for the purposes of DNA identification analysis must be collected from persons convicted of the following: Assault in the fourth degree involving DV; a municipal ordinance equivalent to Assault in the fourth degree involving DV; and a municipal ordinance equivalent to Assault in the fourth degree with Sexual Motivation.

When submitting a biological sample collected as a result of a conviction of an equivalent municipal ordinance to the WSP, an agency or department must include a signed affidavit from the prosecuting attorney specifying the state crime to which the municipal ordinance is equivalent.

Domestic Violence Perpetrator Treatment. The Administrative Office of the Courts, through the Washington State Gender and Justice Commission, must convene a work group to address the issue of DV perpetrator treatment and the role of certified treatment programs in holding DV perpetrators accountable. Certain prescribed organizations and interests must be represented in the work group membership. The work group must: review laws, regulations, and court and agency practices pertaining to DV perpetrator treatment used in civil and criminal contexts; consider the development of a universal diagnostic evaluation tool to be used by treatment providers and the Department of Corrections; and develop recommendations on changes to existing laws, regulations, and court and agency practices to improve victim safety, decrease recidivism, advance treatment outcomes, and increase the courts' confidence in DV perpetrator treatment. The work group must report its recommendations to the Legislature no later than September 30, 2017.

Fees for Writs of Habeas Corpus. Sheriffs are permitted 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 unable to pay due to poverty.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill addresses repeat DV offenders, who are the most dangerous people in the community and are at the greatest risk for committing felonies. Much of this conduct is very serious, yet prosecutors cannot currently charge the crimes as felonies. The Washington State Institute for Public Policy found in 2007 that there is a strong connection between DV convictions and risk of future crime. This is an important message, because if these offenders are willing to be violent to their loved ones, they do not have a problem being violent to people they do not know. DV is a leading cause of violent recidivism. A study conducted in 2015 by Washington State University concluded that the top two predictors for violent recidivism are DV felonies and DV misdemeanors. Thirty-six other states have made repeat DV offenses felonies. We currently do not collect DNA from those convicted of misdemeanor offenses relating to DV, but this bill would allow for that collection after conviction. This bill also addresses perpetrator treatment groups, because the effective treatment and supervision of these offenders is important. The tools for effective DV perpetrator treatment are not currently available.

OTHER: There are concerns regarding Section 4 relating to the equivalent municipal ordinances that would also qualify for a collection of DNA samples. These particular crimes

are not written under the Washington Criminal Code and their inclusion in the bill could have broader implications than intended. There is an amendment that addresses this concern.

**Persons Testifying:** PRO: Representative Goodman, Prime Sponsor; David Martin, King County Prosecuting Attorney's Office.

OTHER: Melissa Van Gorkam, WA State Patrol.

**Persons Signed In To Testify But Not Testifying:** No one.