

SENATE BILL REPORT

E2SHB 1163

As Reported by Senate Committee On:
Law & Justice, March 29, 2017

Title: An act relating to domestic violence.

Brief Description: Concerning domestic violence.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Goodman, Hayes, Orwall, Appleton, Klippert, Pellicciotti, Pettigrew, Chapman, Kilduff, Bergquist, Stanford and Kloba).

Brief History: Passed House: 3/01/17, 93-5.

Committee Activity: Law & Justice: 3/14/17, 3/29/17 [DPA-WM].

Brief Summary of Amended Bill

- Elevates Assault in the fourth degree involving domestic violence (DV) from a gross misdemeanor to a Class C felony ranked as a seriousness level IV when a defendant has two or more prior adult convictions for certain crimes involving DV in the previous ten years.
- Counts prior adult convictions for Assault of a Child or Criminal Mistreatment involving DV as two points when calculating an offender score for sentencing pursuant to a felony DV conviction.
- Requires deoxyribonucleic acid (DNA) collection from offenders upon conviction for an Assault in the fourth degree offense when DV was pleaded and proven.
- Provides that sheriffs may waive fees associated with service of writs of habeas corpus issued for return of a child in circumstances in which the person granted the writ is unable to pay due to poverty.
- Requires the Washington State Gender and Justice Commission to convene work groups to address the issues of DV perpetrator treatment and DV risk assessment.
- Prevents the state from using a vacated misdemeanor or gross misdemeanor record of domestic violence in a later criminal prosecution unless the conviction was for violation of a restraining order or stalking,

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thereby preventing the record from precluding possession of a firearm under federal law.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille, Frockt and Wilson.

Staff: Shani Bauer (786-7468)

Background: Domestic Violence. DV is generally defined as a crime committed by one family or household member against another that causes physical harm, bodily injury, or assault. Family or household member is currently defined in statute as spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons 16 years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons 16 years of age or older with whom a person 16 years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

In order to obtain a conviction that includes a designation of DV, DV must be additionally plead and proven in addition to the underlying crime. The addition of a DV designation may have various consequences depending on the crime. For example, a person who is found guilty of a DV felony is subject to supervision by the Department of Corrections and when calculating an offender's criminal history score, certain DV convictions count two points towards the offender's score rather than one. DV may also be considered an aggravating circumstance for the purpose of imposing an exceptional sentence when certain factors are present.

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.

Crimes Against Persons. Crimes may be designated by statute as crimes against persons or crimes against property. If a crime is designated as a crime against persons, additional restrictions may be imposed on the offender at sentencing. These restrictions include that the offender cannot have the offender's record of conviction cleared, and the offender may be subject to community placement or community custody.

Collection of DNA from Offenders. The Washington State Patrol operates and maintains a DNA identification system. Biological samples must be collected from certain 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 kidnaping 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 Kidnaping Offender;
- Harassment;
- Patronizing a Prostitute;
- Sexual Misconduct with a Minor in the second degree;
- Stalking; and
- Violation of a Sexual Assault Protection Order.

Habeas Corpus. Courts may grant writs of habeas corpus in favor of parents, guardians, spouses or domestic partners, and next of kin to enforce rights and for the protection of children and persons who are incompetent. The writ is directed to the sheriff to be served on the person who is alleged to be illegally holding the person who is the subject of the writ. The court may waive the court fees and costs associated with asserting the right to a writ of habeas corpus if the court is satisfied that, by reason of poverty, the person is unable to pay. 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.

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 the defendant is convicted of a DV offense, or is found to have committed DV for the purposes of a DV 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.

Summary of Amended Bill: Felony Assault in the Fourth Degree. Assault in the fourth degree where DV is pleaded and proven is a Class C felony, ranked as a seriousness level IV, if the person has two or more prior adult convictions within the past ten years for any of the following crimes where DV was pleaded and proven:

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

In this context, family or household member is separately defined and 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.

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 Assault in the fourth degree involving DV.

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.

Workgroups. The Administrative Office of the Courts, through the Washington State Gender and Justice Commission, must convene a workgroup 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 workgroup must: (1) review laws, regulations, and court and agency practices pertaining to DV perpetrator treatment used in civil and criminal contexts; (2) consider the development of a universal diagnostic evaluation tool to be used by treatment providers and the Department of Corrections; and (3) 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 Washington State Gender and Justice Commission must also collaborate with the Washington State Coalition Against Domestic Violence and the Washington State University Criminal Justice Program to convene a workgroup composed of representatives from specified entities and interests to study how and when risk assessment can best be used to improve the response to DV. The workgroup must research and make recommendations regarding: (1) how to best develop and use risk assessment in DV response; (2) effective strategies for incorporating DV risk assessment in DV response to reduce deaths, serious injuries, and recidivism related to DV; (3) promoting access to DV risk assessment for criminal justice system actors; (4) examining how risk assessment could be used in bail determinations and protection order hearings, as an alternative to DV mandatory arrest, and as a means to improve prosecution efforts; (5) examining how offender risk, needs, and responsibility could be used in determining eligibility for diversion, sentencing alternatives, and treatment options; (6) how victim risk, needs, and responsibility could be used in improving DV response; and (7) ways to encourage private sector collaboration.

Each workgroup must operate within existing funds and report its recommendations no later than June 30, 2018.

When a court vacates a misdemeanor or gross misdemeanor record of DV, the state may not use the vacated conviction in a later criminal prosecution unless the conviction was for: (1) violating 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; or (2) stalking. A vacated conviction is not considered a conviction for the purposes of firearm possession under federal law.

EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S):

- Prevents the state from using a vacated misdemeanor or gross misdemeanor record of domestic violence in a later criminal prosecution unless the conviction was for violation of a restraining order or stalking. Such vacated record is not a conviction for purposes of precluding possession of a firearm under federal law.
- Ranks Felony Assault in the fourth degree where DV was pleaded and proven as a seriousness level IV.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Engrossed Second Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The main thrust of this bill is to hold repeat DV offenders accountable by making the third conviction a felony. DV offenders are the most dangerous offenders we deal with and have the highest recidivism rates among offenders. Fifty-four percent of mass shootings are related to DV and police are three times more likely to be murdered responding to a DV call than any other call with shots fired. Progression of violence is prevalent among offenders. In one caseload, 38 individuals were responsible for 10 percent of the 1400 cases. Ninety-eight percent of the caseload had a prior misdemeanor. There are many personal stories of the escalating violence of perpetrators, in some circumstances, resulting in the death of the victim or children.

DV is more prevalent than people realize. Many offenders have been perpetrating violence long before they are brought into court and the victim has been living with this behavior for a significant period of time. This behavior should be a felony on the first instance, not the third.

Washington is in the extreme minority in how it treats DV offenders when compared to other states. Forty-three states have sentencing enhancements for repeat DV offenders either by the ability to increase the sentence within a minimum and maximum or elevating the offense through stacking of multiple lower level offenses. Washington is not treating these assaults with the priority level that they deserve.

Under the bill, DV assault in the fourth degree is an unranked felony. The crime should be ranked at least as a seriousness Level IV.

Persons Testifying: PRO: Maria Cumero, citizen; Andrew Howell, Benton County Prosecuting Attorney; Christopher Anderson, Seattle City Attorney; Renee Walls, City of Burien Prosecutor's Office; Amy Flynn, YWCA Yakima; Edward Striedinger, Seattle Police Department; Richard Casares, citizen; David Martin and Ariana Orford, King County Prosecuting Attorney's Office.

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