

SENATE BILL REPORT

SB 6165

As Reported by Senate Committee On:
Law & Justice, February 1, 2018

Title: An act relating to modifying the offense of assault in the third degree.

Brief Description: Modifying the offense of assault in the third degree.

Sponsors: Senators Chase, Angel and Liias.

Brief History:

Committee Activity: Law & Justice: 1/29/18, 2/01/18 [DPS, w/oRec].

Brief Summary of First Substitute Bill

- Adds fare payment monitors performing their duties as potential victims of third-degree criminal assault.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 6165 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Angel, Assistant Ranking Member; Darneille and Frockt.

Minority Report: That it be referred without recommendation.

Signed by Senator Wilson.

Staff: Melissa Burke-Cain (786-7755)

Background: Criminal Assault in Washington. The criminal code categorizes assault with physical harm into four degrees based on the offense's facts and circumstances. The seriousness of the crime distinguishes the degree. Penalties for each assault category are commensurate with the offense's seriousness.

First degree assault requires intent to inflict great bodily harm. If the perpetrator uses any deadly weapon or similar force, or subjects the victim to poison, certain communicable

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diseases, or other similarly dangerous substances, and the incident inflicts great bodily harm on the victim, the crime is a Class A felony.

The criminal code defines the lower assault levels—second, third, and fourth degrees—hierarchically, by referencing the next more serious level. A second-degree assault occurs if the circumstances do not amount to first-degree assault; third-degree assault occurs if the circumstances do not amount to second-degree assault, and fourth-degree assault occurs if the circumstances do not amount to third-degree assault.

Assault Penalties. A first-degree assault is a Class A felony punishable by up to life imprisonment for, a fine up to \$50,000, or both. Second-degree assault is a Class B felony unless the court makes a sexual motivation finding. A sexual motivation finding increases the level to a Class A felony. A Class B felony conviction may result in imprisonment up to ten years, a fine up to \$20,000, or both. Third-degree assault is a Class C felony. Class C felonies are punishable by up to five years imprisonment, a fine up to \$10,000, or both. Fourth-degree assault is a gross misdemeanor unless the perpetrator's criminal history shows specific crimes and the assault's circumstances involve domestic violence. If so, the crime is increased to a Class C felony. A gross misdemeanor conviction carries a term of imprisonment in a county jail for up to 364 days, a fine up to \$5,000, or both.

Assault in the Third Degree. Third-degree assault may be committed when the circumstances do not amount to first-or second-degree assault and the assault occurs with any of these circumstances:

- with intent to prevent or resist the execution of lawful process, court mandate, or lawful apprehension;
- when the victim is a transit or school transportation worker, firefighter or firefighting official, law enforcement officer or employee, or a peace officer who is assaulted with a projectile stun-gun; and the assault occurs while the victim performs official duties;
- with criminal negligence, a weapon or other instrument likely to produce bodily harm, is used against another causing bodily harm; or the assault causes bodily harm resulting in substantial pain over time that is sufficient to cause considerable suffering;
- when the victim is a physician, nurse, or a hospital-based or emergency services provider, and the victim is performing professional duties; or
- when the victim is a judicial officer or court-related employee performing official duties; or the assault occurs in a courtroom, jury room, judge's chamber, or adjacent areas during court proceedings, and the facility posted a statutory warning sign;

Culpability Standards. Washington's criminal culpability standards are intent, knowledge, recklessness, and criminal negligence. A person acts with criminal intent when acting with the objective or purpose to accomplish a result that constitutes a crime.

A person acts with criminal negligence when they fail to be aware of a substantial risk that a wrongful act may occur, and the failure to be aware of the substantial risk grossly deviates from the care a reasonable person would exercise in the same situation.

Summary of Bill (First Substitute): A person is guilty of assault in the third degree when the victim is a transit worker who is a fare payment monitor who is performing official duties at the time of the assault.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Removes transit customer outreach staff from the list of victims whose assault may cause the perpetrator to face a charge of third degree assault.

Appropriation: None.

Fiscal Note: Available.

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

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: In 2017, assault on transit employees increased significantly. These are public employees who serve on the front lines working with the public. Public transit operations have changed in recent years so that transit riders may ride a bus and pay the driver, but increasingly, riders may pay at a kiosk before boarding. Fare payment monitors check to make sure that individuals have paid the fare. While working, some transit workers have been hit with canes and had water and urine thrown on them as they try to do their jobs. A transit security officer was seriously assaulted. The purpose behind elevating these acts to an assault in the third degree is to deter the behavior. There are also new transit jobs in addition to those who operate the system. The new positions do not fit into the third degree assault statute. These outreach workers meet directly with the public to explain changes in service and provide other outreach services, but assaults on them have been treated as misdemeanors by the courts. Speaking for the transit providers, and for Community Transit, ridership is increasing. The systems are expanding and new transit employees are working on the front lines. Community transit carries riders on 9 million trips a year. The transit employee assaults are not a huge number of cases but we want employees to know that it is not ok for them to be spit upon or treated badly. This bill has full support from the transit entities, the WSTA, and transit employee unions.

OTHER: It is reasonable to protect transit officers who check fares which are more contentious encounters. However, including outreach workers taking to community groups seems like going too far. Perhaps it would make sense to add an enhancement to a misdemeanor assault charge if the victim is a transit outreach worker, but not make such assaults Class C felonies.

Persons Testifying: PRO: Senator Maralyn Chase, Prime Sponsor; Geri Beardsley, Community Transit; Michael Shaw, WSTA.

OTHER: Arthur West, citizen.

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