

FINAL BILL REPORT

E2SHB 1517

C 263 L 19
Synopsis as Enacted

Brief Description: Concerning domestic violence.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Goodman, Mosbrucker, Orwall, Griffey, Lovick, Davis, Appleton, Pettigrew, Pellicciotti, Kilduff and Valdez; by request of Uniform Law Commission).

House Committee on Public Safety
House Committee on Appropriations
Senate Committee on Law & Justice
Senate Committee on Ways & Means

Background:

Domestic Violence.

A crime of domestic violence (DV) is generally a crime committed by one family or household member against another. "Family or household members" means spouses or domestic partners; former spouses or former domestic partners; 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 age 16 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 age 16 or older with whom a person age 16 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.

Many criminal offenses may be considered DV offenses, so long as the prosecutor pleads and proves the facts of DV before the jury.

Treatment and Risk Assessments.

A court may order a defendant or respondent to participate in a DV perpetrator treatment program upon conviction of a DV offense or in relation to a DV protection order. State law provides minimum requirements for the goals and curriculum of DV treatment programs and directs the Department of Children, Youth, and Families (DCYF) (formerly the Department

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of Social and Health Services) to adopt administrative rules for the certification and regulation of individual programs. In 2018 DCYF repealed and replaced the administrative rules, based on a new model of DV treatment.

The Department of Corrections (DOC) currently uses the Washington One Risk and Needs Assessment tool developed in a partnership with Washington State University. The tool assesses an incarcerated offender's risk to reoffend based on static and dynamic factors. Static factors are constant, such as a criminal history, and dynamic factors can change, such as behavior. The DOC uses the tool to assess the risk, needs, and responsibility for every offender, impacting his or her services, programming, and classification. The tool does not distinguish between DV and non-DV offenders.

In 2017 legislation was enacted directing the Administrative Office of the Courts, through the Washington State Gender and Justice Commission, to form two work groups to address issues pertaining to DV treatment and DV risk assessments. The work groups submitted reports to the Legislature and Governor in June of 2018. The work groups expire on June 30, 2019.

Drug Offender Sentencing Alternative.

The Drug Offender Sentencing Alternative (DOSA) is a sentencing alternative for felony offenders in which a sentence is reduced in exchange for completing a chemical dependency treatment program. An offender is eligible for the DOSA if he or she meets certain statutory criteria. For example, the conviction may not be a violent or sex offense, and the conviction may not include a firearm or deadly weapon sentence enhancement.

There are two types of DOSA programs: prison-based and residential. The prison-based DOSA involves a period of incarceration at the facility where the offender completed chemical dependency treatment, followed by a term of community custody. The residential DOSA does not involve incarceration; instead, the person receives chemical dependency treatment in the community while in community custody. The residential DOSA is reserved for offenders who would otherwise have had a shorter sentence.

Before imposing a DOSA, the court is required to order the DOC to complete either a risk assessment report or a chemical dependency screening report.

Community Custody.

Community custody is the portion of an offender's sentence served in the community subject to supervision by the DOC. Courts are mandated to order community custody for offenders convicted of certain crimes delineated in statute. Community custody conditions may include: living in an approved residence; refraining from contacting certain persons; drug and alcohol treatment; and others.

When an offender is receiving court- or DOC-ordered mental health or chemical dependency treatment, he or she must disclose to the provider where he or she is in community custody under DOC supervision.

If an offender violates the conditions of community custody, the offender may be subject to a variety of sanctions, including being returned to confinement.

Deferred Prosecution Programs.

A person charged with a misdemeanor or gross misdemeanor in district or municipal court may petition the court for a deferred prosecution. The person petitioning for a deferred prosecution must admit that substance abuse or mental health problems caused the person to commit the offense and that treatment is necessary to prevent a reoccurrence.

A participant must undergo treatment in a two-year program. If the person successfully completes the program, the court will dismiss the charges three years after successful completion. If a person fails to complete the program, the court will determine whether to remove the person from the deferred prosecution and enter judgment on the charge.

Suspended Sentences.

A court may suspend the imposition or execution of a criminal sentence and direct that the suspension continue as long as the defendant complies with conditions of probation imposed by the court. The court retains jurisdiction over the defendant during this time and may modify or revoke its order suspending the sentence if the defendant violates or fails to carry out any of the court's conditions. A court of limited jurisdiction may suspend a sentence for a nonfelony DV offense for up to five years. Nonfelony DV sentences in cases heard in superior courts may be suspended for up to two years.

Criminal No-Contact Orders and Civil Protection Orders.

There are several kinds of orders available to limit respondents' contact with victims. No-contact orders are commonly issued as part of criminal proceedings, and civil protection orders are available regardless of whether a criminal case is pending.

A police officer must arrest a person without a warrant if the officer has probable cause to believe that the person has violated a no-contact or civil protection order. A violation of a no-contact or protection order is generally a gross misdemeanor offense. A violation of a no-contact or protection order is a class C felony if the offender has two previous violations of an order or if the violation involves certain conduct.

Domestic Violence No-Contact Orders. While a DV case is pending, the court may issue a no-contact order prohibiting the defendant from having contact with the victim or knowingly coming to or remaining within a specified location. When a defendant is found guilty, the court can issue a no-contact order as a condition of the sentence. Statute does not identify a specific period of time for which DV no-contact orders remain in effect. A recent Washington State Court of Appeals case, *State v. Granath*, held that post-conviction DV no-contact orders expire when the defendant has completed all other conditions of the sentence.

Civil Domestic Violence Protection Orders. Civil DV protection orders are available to those who have suffered physical harm, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking by a family or household member.

A victim of DV may petition the court for a civil DV protection order prohibiting the respondent from having contact with the victim and knowingly coming to or remaining within a specified location.

The federal Violence Against Women Act requires states to enforce civil DV protection orders issued by another state, United States territory or possession, or tribal court. As such, state law contains procedures and requirements for the enforcement of out-of-state and tribal court protection orders. However, no such provisions exist for civil DV protection orders issued in Canada or other foreign nations.

Summary:

Domestic Violence.

Definitions of "domestic violence" are modified to include specified crimes committed by one family or household member against another, or by one intimate partner against another.

"Intimate partner" means: spouses, or domestic partners; former spouses, or former domestic partners; persons who have a child in common regardless of whether they have been married or have lived together at any time; adult persons presently or previously residing together who have or have had a dating relationship; persons age 16 or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship; and persons age 16 or older with whom a person age 16 or older has or has had a dating relationship.

"Family or household members" means: adult persons related by blood or marriage; adult persons who are presently residing together or who have resided together in the past; and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

Whenever a prosecutor institutes or conducts a criminal proceeding involving DV, the prosecutor must specify whether the victim and defendant are intimate partners or family or household members. Likewise, a petition for a civil DV protection order must also specify whether the victim and respondent are intimate partners or family or household members.

Treatment and Risk Assessments.

The Washington State University Department of Criminal Justice must develop a tool for the Washington One Risk and Needs Assessment for the purpose of predicting whether an offender will commit DV in the future. The additional tool may incorporate relevant court records into prediction modeling, if practical within the resources allocated. The tool must be available for use by July 1, 2020. Subject to a specific appropriation, the DOC must begin implementing use of the tool by July 1, 2020, with full implementation alongside the Washington One Risk Assessment by July 1, 2021.

The Harborview Center for Sexual Assault and Traumatic Stress (Center) must develop a training curriculum for DV treatment providers that incorporates evidence-based practices

and treatment modalities consistent with the Washington Administrative Code. The Center must make the curriculum available by June 30, 2020.

The DV work groups administered by the Administrative Office the Courts are extended to June 30, 2020, for the purpose of evaluating and providing recommendations on additional items pertaining to DV treatment and risk assessments.

Drug Offender Sentencing Alternative.

Before imposing a DOSA for a DV offender, the court must order the DOC to complete a presentence investigation and chemical dependency screening report. The investigation must include, where applicable, an assessment as to whether effective DV treatment is available from a certified provider.

A DV offender participating in either a prison-based or residential DOSA must participate in DV treatment during his or her term of community custody. In addition to other conditions currently authorized, a court may order a DOSA participant to pay for the costs of global positioning system (GPS) monitoring for compliance with a no-contact order.

Community Custody.

For a DV offender, the DOC may impose no-contact conditions, electronic monitoring, and other conditions based on the risk to community safety or risk of DV reoffense. A DV offender serving a term of community custody must disclose his or her custody status to his or her DV treatment provider.

Deferred Prosecution Programs.

A deferred prosecution program may be used for persons with DV behavioral problems as well as DV behavioral problems co-occurring with substance abuse or mental health problems.

Requirements are established for persons participating in a deferred prosecution program. A petition for participation must allege that the offense arose from a DV behavior problem and must include a case history and risk assessment prepared by a DV treatment provider.

The court must impose certain conditions for participants. Among other requirements, the court must order: completion of and compliance with DV treatment; participation in appropriate ancillary or co-occurring treatment; compliance with related no-contact orders and protection orders; and surrender of firearms in accordance with certain current statutory requirements. The court may also order: self-help recovery support groups for substance abuse; abstinence from drugs and alcohol; and payment of restitution and costs.

A person may only participate in a deferred prosecution program one time for a DV offense, and he or she is not eligible if the offense was originally charged as a felony. In addition to other current grounds for appeals, a prosecutor may appeal a petition for deferred prosecution on the grounds that a prior stipulated order of continuance has been granted to the defendant.

Suspended Sentences.

Superior courts may suspend imposition of a nonfelony DV sentence and place the defendant on probation for five years, rather than up to two years.

No-Contact Orders.

Time periods are designated for which DV no-contact orders remain in effect. In nonfelony cases, a DV no-contact order remains in effect for a fixed period of time determined by the court, not to exceed five years from the date of sentencing or disposition. In felony cases, a no-contact order remains in effect for a fixed period of time determined by the court, not to exceed the statutory maximum sentence. If the defendant remains subject to imprisonment, community supervision, conditional release, probation, or parole beyond the time period designated by the court, the order remains in effect until expiration of that condition. The court may modify an order to extend its expiration date, subject to these time limitations.

Civil Protection Orders.

The Uniform Recognition and Enforcement of Canadian DV Protection Orders Act is established.

"Canadian DV protection order" means a judgment or part of a judgment or order issued in a civil proceeding by a court of Canada under law of the issuing jurisdiction which relates to DV and prohibits a respondent from:

- being in physical proximity to a protected individual or following a protected individual;
- directly or indirectly contacting or communicating with a protected individual or other individual described in the order;
- being within a certain distance of a specified place or location associated with a protected individual; or
- molesting, annoying, harassing, or engaging in threatening conduct directed at a protected individual.

If a law enforcement officer determines there is probable cause to believe a valid Canadian DV protection order (order) exists and has been violated, the officer must enforce the terms of the order in the same manner as a DV protection order issued in Washington. A copy of the order constitutes probable cause to believe that a valid order exists. However, if a record of an order is not presented, a law enforcement officer may consider other information in determining whether there is probable cause to believe that a valid Canadian DV protection order exists.

A person with a valid Canadian DV protection order may file it with Washington courts. Procedures are established for courts to enforce or refuse to enforce an order upon the application of a petitioner or respondent.

Votes on Final Passage:

House 97 0

Senate 46 0 (Senate amended)
House 94 0 (House concurred)

Effective: July 28, 2019
January 1, 2021 (Section 501-504, 601, 601, and 701-708)
June 30, 2019 (Sections 801-803)
January 1, 2020 (Sections 901-915, 1001, and 1002)