SENATE BILL REPORT
E2SHB 1517

As Passed Senate - Amended, April 12, 2019

Title: An act relating to domestic violence.

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).

Brief History: Passed House: 3/06/19, 97-0.
Committee Activity: Law & Justice: 3/18/19, 3/21/19 [DPA-WM].
Ways & Means: 3/28/19, 4/05/19 [DPA(LAW)].
Floor Activity:
Passed Senate - Amended: 4/12/19, 46-0.

Brief Summary of Bill
(As Amended by Senate)

- Modifies definitions to distinguish domestic violence (DV) between family and household members from intimate partner DV to allow for enhanced data collection.
- Requires development of a new DV risk assessment tool for the Washington ONE risk assessment.
- Adds requirements for DV offenders participating in the Special Drug Offender Sentencing Alternative.
- Establishes requirements for a DV offender participating in deferred prosecution.
- Modifies community custody conditions for DV offenders and the length of time a DV no-contact order remains in effect when it is a sentencing condition.
- Authorizes enforcement of Canadian civil DV protection orders.

SENATE COMMITTEE ON LAW & JUSTICE

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 as amended and be referred to Committee on Ways & Means.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Kuderer and Salomon.

Staff: Melissa Burke-Cain (786-7755)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended by Committee on Law & Justice.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Bailey, Becker, Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Liias, Palumbo, Pedersen, Schoesler, Van De Wege, Wagoner and Warnick.

Staff: Travis Sugarman (360) 786-7446

Background: Domestic Violence and Risk Assessment. A DV crime involves one family or household member against another. The perpetrator and victim may, or may not, be intimate partners. Many violent crimes are charged and tried as DV crimes when the prosecutor pleads and proves the domestic relationship between the defendant and victim at trial. A court may order a defendant in a DV criminal case, or respondent in a petition for DV protection order, to participate in a DV perpetrator treatment program. State law provides minimum requirements for the goals and curriculum of DV treatment programs and directs the Department of Children, Youth, and Families (DCYF) to adopt administrative rules certifying and regulating individual programs. In 2018, DCYF repealed and replaced the administrative rules based on a revised DV treatment model.

The Department of Corrections (DOC) currently uses the Washington ONE risk and needs assessment tool to assess an 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 responsivity for every offender.

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 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 DOSA-eligible cases, an offender completes a chemical dependency treatment program in exchange for a reduced sentence. An offender is eligible for DOSA if:

- the conviction is not a violent or sex offense, and the conviction does not include a firearm or deadly weapon sentence enhancement;
- the conviction is not a felony impaired driving offense;
- the offender has no prior convictions for a sex offense at any time and no prior convictions for a violent offense within the previous ten years;

- if the conviction's basis is violation of the Uniform Controlled Substances Act, and the court determines the offense involved only a small quantity of the particular controlled substance;
- the offender is not subject to a federal immigration deportation detainer or order and does not become subject to a deportation order during the period of the sentence; and
- the offender has not received a DOSA more than once in the previous ten years before the current offense.

There are two types of DOSA programs—prison-based and residential. The prison-based DOSA involves a period of incarceration at a DOC facility where the offender completes chemical dependency treatment, followed by a term of community custody. The residential DOSA does not involve incarceration; instead, the offender serves the sentence in community custody and receives chemical dependency treatment in the community. Before imposing a DOSA, the court orders DOC to complete a risk assessment report or a chemical dependency screening report.

Community Custody. An offender in community custody does not serve their sentence confined in a DOC facility. The offender lives in the community subject to the DOC's supervision. Courts must order community custody for offenders convicted of specific crimes listed in statute. Offenders serving their sentence in community custody may be required to live in a DOC-approved residence, refrain from contacting the crime victim or certain persons, participate in a drug and alcohol treatment plan, and comply with other conditions imposed by the sentencing court. When an offender receives court- or DOC-ordered mental health or chemical dependency treatment, the offender must tell their provider they are in community custody under DOC supervision. An offender who violates the conditions of community custody faces sanctions. Certain violations may result in moving the offender to DOC confinement for specified periods.

Deferred Prosecution Programs. A defendant charged with a misdemeanor or gross misdemeanor in district or municipal court may request a deferred prosecution. The defendant must admit substance abuse or mental health problems caused the person to commit the offense and that treatment is necessary. A state-approved treatment provider must evaluate the defendant. A defendant in a deferred prosecution must undergo treatment in a two-year program. If the defendant successfully completes the program, the court will dismiss the charges three years after successful completion. If a defendant fails to complete the program, the court will determine whether to terminate 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 court-imposed probation conditions. 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 non-felony DV offense for up to five years. A superior court may suspend non-felony DV sentences 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. In a criminal case, the court may issue a

no-contact order. A person may file a petition for a civil protection order 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 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.

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 there is a verdict finding the defendant guilty, the court can issue a no-contact order as a condition of the sentence. Current laws do not identify a specific length a DV no-contact order remains in effect. A recent case, *State v. Granath*, held that post-conviction DV no-contact orders expire when the defendant has completed all other conditions of the sentence.

A person who suffers physical harm, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking by a family or household member may seek a civil DV protection order from the court. A court issuing a protection order may impose conditions needed to prevent harm or risk of harm, such as restraining the respondent from having contact with the victim.

The federal Violence Against Women Act requires states to enforce civil DV protection orders issued by another state, a United States territory or possession, or a tribal court. Current state law contains procedures and requirements for enforcing an out-of-state or tribal court protection order. However, Canadian DV protection orders are not enforceable in Washington. However, five states adopted a uniform law, the Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act. Those states are Wisconsin, Nevada, California, North Dakota, and Delaware. The uniform law is under consideration in the Oregon and Vermont Legislatures.

Summary of Amended Bill: Identifying Intimate Partner Domestic Violence in Civil and Criminal Cases. Definitions are revised to distinguish intimate partner domestic violence from family or household member domestic violence. A criminal domestic violence case must identify whether the alleged crime involved domestic violence between household and family members or intimate partners. Non-civil actions for domestic violence protection orders must specify whether the victim and respondent are family and household members or intimate partners.

Revising the Duration of Criminal No-Contact Orders Imposed as a Sentence Condition. The duration of criminal no-contact orders imposed as a condition of sentence in non-felony cases is revised. The court may suspend the sentence in a non-felony domestic violence case for up to five years in all courts. When a no-contact order is a sentencing condition in a non-felony case, the no-contact order remains in effect for a fixed period up to five years from the sentencing date or disposition. In felony cases, the no-contact order remains in effect for a fixed period up to the adult maximum sentence for the offense.

Risk Assessment and Sentencing Alternatives in Domestic Violence Cases. Washington State University's criminal justice department must develop a prediction model for the Washington ONE risk assessment tool predicting whether an offender will commit domestic violence in the future. The model may incorporate relevant court records into the prediction modeling used by DOC as part of its current risk, needs, and responsivity assessment process. The module must be available by July 1, 2020. Subject to funds available for this purpose, DOC must begin implementation of the model after July 1, 2020 and fully implement the tool by July 1, 2021 when it conducts a ONE assessment for an offender with a current conviction in a case in which the plea and proof involves DV. The Harborview center for sexual assault and traumatic stress must develop a training curriculum for domestic violence treatment providers by June 30, 2020.

DOC must complete a presentence investigation before a court imposes a DOSA on a defendant convicted of a felony in a case involving DV unless the court waives the report. When the sentencing alternative contemplates a residential placement, and the case involves DV, the report or evaluation must determine whether effective DV perpetrator treatment is available from a state-certified DV treatment provider. If the sentencing alternative in a DV case contemplates community custody, the court may add monitoring using GPS technology to support compliance with a no-contact order.

Criminal Domestic Violence Cases, Community Custody, Reentry, and Deferred Prosecution. The offender must disclose being under DOC supervision to all treatment providers including DV treatment providers. The DOC may impose no-contact conditions on an offender sentenced pursuant to a DV conviction. When the court orders treatment, including DV perpetrator treatment, the offender must inform the treatment provider whether DOC supervises them.

The court must make specific findings before granting deferred prosecution to a defendant charged with a misdemeanor or gross misdemeanor DV offense. The findings include that the petitioner stipulates to the admissibility and sufficiency of the facts in the police report, waives their speedy trial right, waives their right to call witnesses to testify, waives their own right to testify or present evidence in defense of the charge, and waives a jury trial. A defendant cannot participate in a DV deferred prosecution if they participated in a deferred prosecution program for a prior DV offense, or the original charge for the current misdemeanor or gross misdemeanor DV offense was as a felony offense in superior court.

A petition for deferred prosecution must allege the wrongful conduct resulted from DV behavior problems for which the petitioner needs treatment. A state-certified DV treatment provider must provide a written assessment related to the DV conduct. A defendant is not eligible for deferred prosecution for a DV behavior problem if the petitioner sincerely believes they do not suffer from DV behavior problems. The arraigning judge, with the prosecutor's agreement, may continue the arraignment hearing for a treatment referral to an approved, state-certified DV treatment provider for a diagnostic investigation and evaluation. A deferred prosecution for DV behavior, or DV behavior with co-occurring substance use or mental health conditions, requires the defendant to participate in treatment at a level equal to the treatment plan, comply with the treatment contract and any additional treatments determined necessary for the DV intervention, and provide proof of weapons surrender.

When a court grants a deferred prosecution petition in a DV case, the court must order the defendant not to possess firearms, and the defendant must surrender any firearms as a condition of the deferred prosecution. The court may order the defendant to pay restitution and costs. The court may also order conditions such as attendance at recovery support groups for alcohol and drug use, complete abstinence from alcohol and non-prescribed drugs, and periodic urine analysis or breath tests.

The court may terminate the deferred prosecution if the defendant violates the conditions. When the court orders a deferred prosecution for a petition involving DV behavior problems, the court dismisses the charges when it has proof the defendant successfully completed the DV treatment plan.

The DV work groups created through the administrative office of the courts must provide reports evaluating, providing guidance, and making recommendations regarding previous recommendations. The work groups must evaluate and make recommendations related to implementing DV sentencing alternatives and risk assessment to promote consistent application across the state. The work groups must submit 2019 reports and recommendations by June 20, 2020.

Uniform Law Recognizing and Enforcing Canadian Domestic Violence Crime Protection Orders. A law enforcement officer has probable cause to believe a Canadian DV protection order exists when the officer receives a record of the Canadian order, the order identifies the protected person and the respondent, and the order appears in effect on its face. A certified copy of a Canadian DV protection order is not necessary for enforcement. A law enforcement officer may consider other information to decide if there is probable cause to believe a Canadian DV protection order is in effect.

If a Canadian DV protection order is not enforceable because the respondent had no notice of the order or service of the order, the law enforcement officer will make reasonable efforts to contact the respondent, consistent with the protected individual's safety. The officer will give the respondent reasonable chance to comply with the order.

A court may issue an order enforcing or refusing to enforce a Canadian DV protection order at the request of a person authorized to seek enforcement of the order or a respondent. The court follows the same procedures for enforcing a Canadian order as it uses for a domestic DV protection order. The court is limited to enforcing the terms of the Canadian order.

The court may enforce the Canadian order if it identifies a protected individual and respondent, the order is valid and in effect, the initiating court had jurisdiction over the parties and the subject matter, and the respondent had reasonable notice and a hearing opportunity before the Canadian court issued the order. If the court finds the Canadian order is valid on its face, it is prima facie evidence that the court may enforce the order. The respondent has an affirmative defense if the Canadian DV protection order does not meet the requirements for jurisdiction over the parties, facial validity, or notice and opportunity for hearing. If so, the court may order the Canadian DV protection order is not enforceable and may not be registered in Washington.

A protected person has the option to register a Canadian DV protection order with the court clerk if the order is valid, and the person presents a certified, authenticated, or exemplified copy for filing where the protected person resides. The court clerk may accept a Canadian DV protection order by fax or email as long as the transmittal includes a fax or digital signature. This bill limits or supersedes the federal Electronic Signature in Global and National Commerce Act except for sections 101(c) and 103(b) of that Act. The clerk must execute an affidavit stating to the best of the affiant's knowledge, the Canadian order is valid and in effect. After registry, the court clerk provides a certified copy of the registered order. An authorized official may enter the order into a state or federal DV order registry. If an order in the registry expires, is unenforceable, or is inaccurate, it may be corrected or removed. The clerk may not charge a fee for registering the order. Law enforcement may enforce the Canadian DV protection order even if it is not registered or filed in Washington. Government agencies and officials acting in good faith to comply with this law are immune from civil or criminal liability arising from registering or enforcing a Canadian DV protection order.

This bill applies to a Canadian DV protection order, or a continuing action for enforcing a Canadian DV protection order issued or started before, on, or after the effective date of this section. This chapter covers a request to enforce or address a violation of an order made on or after the effective date of this section and regarding an order issued before, on, or after the effective date of this act. The bill also adds Canadian DV protection orders as enforceable by arrest without a warrant when there is probable cause to believe the respondent has violated the protection order. Canadian DV protection orders are also included in the Washington Association of Sheriffs and Police Chief's notification system for protected persons.

Appropriation: The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

Fiscal Note: Available.

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

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Engrossed Second Substitute House Bill (Law & Justice): *The committee recommended a different version of the bill than what was heard.* PRO: The purpose underlying this bill is to orient the state's domestic violence policy toward a therapeutic response. Substance use is often linked to domestic violence. When appropriate, a residential or prison-based Drug Offender Sentencing Alternative (DOSA) would include participation in a domestic violence treatment program. DCYF promulgated a new administrative code for domestic violence treatment programs. WSU and DOC will develop a new module to add to the Washington ONE risk assessment model that considers the risk of reoffending for domestic violence offenders. Courts will have a risk assessment evaluation presentencing unless the court waives it. The bill also includes the long overdue revision related to the *Granath* case. The case interpreted the law to require terminating a domestic violence no contact order when an offender is released. It does not make any sense to terminate a no contact order when the offender is released. By giving reciprocity to enforcement of Canadian domestic violence orders, we recognize that domestic abuse does

not respect international borders. The bill includes training in the newest models for domestic violence treatment consistent with the new administrative code developed by DCYF. This would make our state a national leader in domestic violence response. This bill continues the state's efforts to modernize the response to domestic violence and provide the courts with more options than the current punitive system. Data collection will bifurcate intimate partner violence from other forms of household member violence to help tailor the response and evaluate its success. Drug and substance abuse increases lethality and the severity of injury to domestic violence survivors, but the response must be evidence-based and effective. This is no less than criminal justice reform for domestic violence. The changes presented to alternative sentencing are important changes. If domestic violence is not addressed by taking DV treatment to the next step, violence escalates. This is a very responsible approach for a very dangerous group of individuals. There are serious flaws in the current system as evidenced by the example of a family murder-suicide in rural Massachusetts. To those familiar with the patterns of domestic violence, the Massachusetts case is clearly a result of domestic violence. But, the history of domestic violence is not in the system, and the systems used to track domestic violence are not victim-friendly or meaningfully accessible. The bill is a good start, but only a start; much more work needs to be done. Systems need to be integrated. Deferred prosecution can be an effective tool, especially at the misdemeanor level. The key is early intervention to prevent a misdemeanor offender from graduating to the felony offense level.

Persons Testifying (Law & Justice): PRO: Representative Roger Goodman, Prime Sponsor; Natasha Willson, KCPAO; David Martin, King County Prosecuting Attorney; Tamaso Johnson, Washington State Coalition Against Domestic Violence; Eric Lucas, Judge, Snohomish County Superior Court and the Gender and Justice Commission.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony on Bill as Amended by Law & Justice (Ways & Means): PRO: I am here representing the Washington State Association of Prosecuting Attorneys, this is a smart cost effective criminal and clinical reform package for domestic violence and comes from a broad coalition of stakeholders, judges, defense researchers, advocates, victims, treatment providers and prosecutors. There is a critically important investment of $56,000 to Harborview Center for Sexual Assault and Traumatic Stress development of a training. I am here representing the Washington State Coalition Against Domestic Violence and we are in support of the legislation. DV victims want to be safe and for the violence to stop and they want there to be accountability. We support more closely looking at risk assessments when determining sentencing alternatives. This bill is a step in the right direction.

Persons Testifying (Ways & Means): PRO: David Martin, King County Prosecuting Attorney.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.