

HOUSE BILL REPORT

ESHB 2777

As Amended by the Senate

Title: An act relating to modifying domestic violence provisions.

Brief Description: Modifying domestic violence provisions.

Sponsors: House Committee on Public Safety & Emergency Preparedness (originally sponsored by Representatives Goodman, O'Brien, Driscoll, Kessler, Maxwell, Finn, Hurst, Williams, Appleton, Hudgins, Kelley, Ericks, Morrell, McCoy, Seaquist, Green, Carlyle, Conway, Pearson and Simpson).

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 1/26/10, 1/27/10 [DPS].

Floor Activity:

Passed House: 2/12/10, 97-0.

Senate Amended.

Passed Senate: 3/3/10, 47-0.

Brief Summary of Engrossed Substitute Bill

- Makes a number of changes to the laws relating to domestic violence, including changes in the areas of law enforcement and arrest, no-contact and protection orders, firearms possession, sentencing reforms, treatment and services for perpetrators and victims, and human remains disposition.
- Adjusts how prior non-felony, domestic violent-related offenses are calculated for purposes of calculating an offender's sentence.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Hurst, Chair; O'Brien, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Appleton, Goodman, Kirby and Ross.

Staff: Yvonne Walker (786-7841).

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.

Background:

Domestic violence can be generally defined as any action that causes physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; sexual assault of one family or household member by another; or the stalking of one family or household member by another family or household member.

Often victims of domestic violence seek help and protection through a court order. There are several types of orders a court may grant that restrict a person's ability to have contact with another: (1) protection orders; (2) no-contact orders; (3) restraining orders; and (4) foreign protection orders.

Law Enforcement and Arrest Provisions.

Generally, a police officer is required to arrest a person 16 years of age or older if the officer has probable cause to believe that the person has assaulted a family or household member within the four hours preceding arrest. The officer is required to arrest the person whom the officer believes is the primary physical aggressor. In making this determination, the officer must consider certain factors, such as the comparative extent of injuries inflicted and the history of domestic violence between the parties.

No-Contact Orders.

A defendant arrested or cited for an offense involving domestic violence is required to appear in person before the court. The court must determine the necessity of imposing a no-contact order or other conditions of pretrial release. Upon arrest or conviction of an offense involving domestic violence, a court may enter a no-contact order prohibiting a defendant from contacting the protected party. No-contact orders can be issued without either the request or permission of the protected party.

Protection Orders.

A victim of domestic violence who is 16 years of age or older may petition the court for a civil protection order. A court issuing a protection order may impose a variety of conditions, such as restraining the respondent from having contact with the victim.

Sentencing Reforms.

Sentencing. Under the Sentencing Reform Act (SRA), an offender convicted of a felony has a standard sentence range that is based on the seriousness of the offense and the offender's prior felony convictions. The number of points an offender receives for current and prior felonies varies according to certain rules. Generally, the SRA and the points that an offender receives does not apply to convictions for misdemeanor or gross misdemeanor offenses.

Courts and Probation. District and municipal courts may impose a maximum of two years probation following a sentence for a non-felony offense involving domestic violence.

Aggravating Circumstance. Generally, the standard sentencing range is presumed to be appropriate for the typical felony case. However, the law provides that in exceptional cases, a court has the discretion to depart from the standard range and may impose an exceptional sentence below the standard range (with a mitigating circumstance) or above the range (with an aggravating circumstance). The SRA provides a list of factors that a court may consider in deciding whether to impose an exceptional sentence outside of the standard range for a felony offense involving domestic violence. Any factor that increases a defendant's sentence above the standard range, other than the fact of a prior conviction, must be proven to a jury beyond a reasonable doubt.

Treatment/Services for Perpetrators and Victims.

The Department of Social and Health Services (DSHS) certifies domestic violence perpetrator programs that: (1) accept perpetrators of domestic violence into treatment to satisfy court orders; or (2) represent themselves as treating domestic violence perpetrators. The DSHS must adopt rules and enforce minimum qualifications for treatment programs.

Human Remains Disposition.

Washington law governs who has the right to control the disposition of a person's remains. Absent a prearrangement filed by the decedent, the right to control the disposition of the remains vests in the following order:

1. the surviving spouse or registered domestic partner;
2. the surviving adult children;
3. the surviving parents of the decedent;
4. the surviving siblings of the decedent; or
5. a person acting as a representative of the decedent under the signed authorization of the decedent.

Summary of Engrossed Substitute Bill:

Law Enforcement and Arrest Provisions.

For the purposes of identifying the primary physical aggressor, the arresting officer must consider the history of domestic violence of each person involved, including whether the conduct was part of an ongoing pattern of abuse. When funded, the Washington Association of Sheriffs and Police Chiefs must convene a model policy work group to address the reporting of domestic violence to law enforcement in cases where the victim is unable or unwilling to make a report in the jurisdiction where the alleged crime occurred.

No-Contact Orders.

At the time of the defendant's first appearance before the court for an offense involving domestic violence, the prosecutor must provide the court with the defendant's criminal history and history of no-contact and protection orders.

All courts are required to develop policies and procedures to grant victims a process to modify or rescind a no-contact order. The Administrative Office of the Courts (AOC) is

required to develop a model policy to assist the courts in implementing this requirement. The AOC must develop a pattern form for no-contact orders issued for offenses involving domestic violence. A no-contact order issued by the court must substantially comply with the pattern form developed by the AOC.

Protection Orders.

New provisions are created to address when a court, issuing protection orders for domestic violence, sexual assault, and harassment, may exercise personal jurisdiction over a nonresident. When issuing a domestic violence protection order, courts may restrain the respondent from cyber stalking or monitoring the actions, location, or communication of the victim by using wire or electronic technology.

Any person 13 years of age or older may petition the court for a domestic violence protection order if he or she is the victim of violence in a dating relationship and the respondent is 16 years of age or older. A petitioner who is under the age of 16 must petition the court through a parent or guardian.

Reconciling No-Contact and Protection Orders.

By December 1, 2011, the AOC must develop guidelines for all courts to establish a process to reconcile duplicate or conflicting no-contact or protection orders issued in Washington. The AOC must provide a report to the Legislature by January 1, 2011, concerning the progress made to develop these guidelines.

Sentencing Reforms.

Sentencing. The formula for calculating an offender's score under the SRA is adjusted. For the purpose of computing an offender's score, if the present conviction is for a felony domestic violence offense, an offender must receive one point (single score) for each prior adult and juvenile repetitive domestic violence offense where domestic violence was pled and proven. "Repetitive domestic violence offenses" include the following non-felony offenses: Assault, violation of a no-contact order or protection order, Harassment, and Stalking.

Courts and Probation. During sentencing for a non-felony offense involving domestic violence, the prosecutor must provide courts of limited jurisdiction with the defendant's criminal history and history of no-contact and protection orders. The maximum period of probation that may be imposed by district and municipal courts is increased from two years to five years. In sentencing for an offense involving domestic violence, courts of limited jurisdiction must consider whether:

- the defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense and the offense is a response to that coercion, control, or abuse;
- the offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time; and
- the offense occurred within sight or sound of the victim's or the offender's minor children under the age of 18.

Aggravating Circumstance. Under the SRA, a court may impose an exceptional sentence below the standard sentence range for offenses involving domestic violence if the defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense, and the offense is a response to that coercion, control, or abuse. An aggravating circumstance that permits an exceptional sentence when the offense was part of an ongoing pattern of abuse of the victim is changed to a pattern of abuse involving a victim or multiple victims.

Treatment/Services for Perpetrators and Victims.

Any program that provides domestic violence treatment to perpetrators of domestic violence must be certified by the DSHS and meet minimum standards for domestic violence treatment purposes. The DSHS may conduct on-site monitoring visits of treatment programs, including reviewing program and management records, to determine the program's compliance with minimum certification qualifications and rules.

Human Remains Disposition.

A person who has been arrested for or charged with first or second degree Murder, Homicide by Abuse, or first or second degree Manslaughter by reason of the death of the decedent is prohibited from controlling the disposition of the decedent's remains. The right to control the disposition vests in an eligible person in the next applicable class listed in statute.

EFFECT OF SENATE AMENDMENT(S):

Several provisions are amended that include the following:

Part One- INTENT SECTION:

- Deletes a portion of the intent section that stated that the Legislature recognizes the continuing nature of domestic violence and finds that the prevention of domestic violence and the proper punishment for domestic violence offenses are compelling state interests that have not been met under current sentencing provisions.

Part Three- NO-CONTACT AND PROTECTION ORDERS:

- Adds and defines the term "next friend" to mean any competent individual, over eighteen years of age, chosen by the minor and who is capable of pursuing the minor's stated interest in the action.
- Adds a new provision requiring the Administrative Office of the Courts to update the law enforcement information form, that it provides for the use of a petitioner who is seeking an ex parte protection order, as a way to prompt the petitioner to disclose on the form whether the person who the petition is seeking to restrain has a disability, brain injury, or impairment requiring special assistance.
- Adds provisions to address when a court, issuing protection orders for domestic violence, sexual assault, and harassment, may exercise personal jurisdiction over a nonresident.

Part Four - SENTENCING REFORMS:

- Adds a new provision that requires "double scoring" for prior adult domestic violence felony offenses and "single scoring" for each second and subsequent juvenile convictions involving a "felony domestic violence-related" offense.
- The original bill had provided one point (single scoring) for each prior adult and juvenile repetitive domestic violence offense (domestic violence misdemeanor offenses) where domestic violence was plead and proven. The amendment eliminates the single scoring for prior convictions of repetitive domestic violence offense committed as a juvenile.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is the result of a workgroup that convened over the summer to take a comprehensive look at domestic violence. This bill is targeting those repeat domestic violence offenders. It is hard to prosecute an offender as a first-time offender when in reality this person has a history of committing domestic violence-misdemeanor offenses. This bill will allow those prior violations for Assault, Harassment, Stalking, and Violations of a No-Contact Order to now be counted like a felony offense. The bill is not retroactive so the costs under the fiscal note will not take effect until later in future years. This bill will hold offenders accountable.

The bill as drafted allows a judge to impose an aggravating circumstance when violence is committed in front of any child. An amendment will be offered to delete that provision and restore that particular aggravating factor back to current law.

(Opposed) There is concern over the scoring of misdemeanors. Our current law has a better system in place than to start scoring misdemeanor offenses and it retains judicial discretion. Under the SRA, prosecutors can charge and file an aggravating factor where the offense involves an ongoing pattern of abuse. A judge in turn can impose an exceptional sentence. This is a better way to punish the worst offenders. Scoring misdemeanors is going to create more litigation because under this bill the domestic violence offense would have to be plead and proven. In addition, courts will have to change their practices to retain records on these domestic violence allegations. The current law strikes the appropriate balance, will not result in costs, and allows more punishment for offenders than they would otherwise get under this bill.

Persons Testifying: (In support) Representative Goodman, prime sponsor; and Tom McBride, Washington Association of Prosecuting Attorneys.

(Opposed) Amy Muth, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

Persons Signed In To Testify But Not Testifying: None.