

# HOUSE BILL REPORT

## ESB 5484

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### As Reported by House Committee On: Public Safety

**Title:** An act relating to assault in the third degree occurring in areas used in connection with court proceedings.

**Brief Description:** Concerning assault in the third degree occurring in areas used in connection with court proceedings.

**Sponsors:** Senators Kline, Frockt, Ranker, Rolfes, Padden, Fain and Kohl-Welles; by request of Attorney General.

#### **Brief History:**

##### **Committee Activity:**

Public Safety: 3/26/13, 4/3/13 [DPA].

#### **Brief Summary of Engrossed Bill (As Amended by Committee)**

- Makes an Assault offense that is committed during certain times and in certain areas of a courthouse an Assault in the third degree offense.
- Expands the list of statutory aggravating factors giving the court grounds to exceed the standard sentencing range, to include felony "crimes against persons" provided the offense occurs during a time the building was being used for court proceedings and signs were posted at the time the offense occurred.
- Requires the Administrative Office of the Courts to develop a standard signage form notifying the public of the possible enhanced penalties under the act.

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#### **HOUSE COMMITTEE ON PUBLIC SAFETY**

**Majority Report:** Do pass as amended. Signed by 11 members: Representatives Goodman, Chair; Roberts, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Holy, Hope, Moscoso, Pettigrew, Ross and Takko.

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*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.*

**Staff:** Yvonne Walker (786-7841).

**Background:**

Assault.

Generally, a person commits Assault if he or she: (a) attempts, with unlawful force, to inflict bodily injury upon another; (b) unlawfully touches another person with criminal intent; or (c) puts another person in apprehension of harm.

The crime is divided into four degrees depending on the manner in which it was committed or the amount of harm caused to the victim. For instance, an assault that would normally be considered Assault in the fourth degree (a gross misdemeanor offense), may be elevated to Assault in the third degree (a seriousness level III, class C felony offense), if the assault was committed against a certain class of persons. For example, an assault against a firefighter performing his or her official duties at the time of the assault is automatically Assault in the third degree. Similar provisions exist for assaults against transit operators, school bus drivers, law enforcement officers, health care providers, and court-related employees.

An offender convicted of Assault in the third degree may receive a maximum sentence of five years in prison, a maximum fine of \$10,000, or both imprisonment and a fine for the class C felony offense. Assault in the fourth degree is a gross misdemeanor offense punishable by a sentence of up to 364 days in jail or a maximum fine of \$5,000, or both imprisonment and a fine.

Aggravating Circumstances.

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 Sentencing Reform Act (SRA) provides an illustrative, but nonexclusive, list of mitigating circumstances which the court may consider with regard to imposing an exceptional sentence below the standard range. The statute also provides an exclusive list of aggravating circumstances which the court may consider an aggravating circumstance or which a jury may consider in imposing an exceptional sentence above the standard range.

Crimes Against Persons.

The standards for prosecutorial discretion in the SRA contain a list of "crimes against persons." Some of the crimes on this list include: Aggravated Murder; Murder one, two, and three; Manslaughter one and two; Kidnapping one and two; Rape one, two, and three; Robbery one and two; Arson one; Burglary one; and Assault one, two, and three. If a crime is designated as a crime against persons, additional restrictions may be imposed on the convicted person at sentencing. Such restrictions include that the convicted person cannot have his or her record of conviction cleared, may be subject to a mandatory term of community custody, and his or her earned release may be limited.

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**Summary of Amended Bill:**

### Assault.

An assault that would normally be Assault in the fourth degree may be elevated to Assault in the third degree, if the Assault offense occurs in a courtroom, jury room, judge's chamber, or any waiting area or corridor immediately adjacent to a courtroom, jury room, or judge's chamber. The assault offense must occur during the time when the courtroom, jury room, or judge's chamber is being used for judicial purposes during court proceedings; and signage must be posted notifying the public of the possible enhanced penalties under this act.

### Aggravating Circumstances and Crimes Against Persons.

The list of aggravating circumstances that a jury may consider when imposing an exceptional sentence above the range is expanded to include a felony "crime against persons" offense if the offense occurs in a courtroom, jury room, judge's chamber, or any waiting area or corridor immediately adjacent to a courtroom, jury room, or judge's chamber. The offense must occur during the time when the courtroom, jury room, or judge's chamber is being used for judicial purposes during court proceedings; and signage must be posted notifying the public of the possible enhanced penalties under the act. The aggravating factor does not include an Assault in the third degree offense when the assault occurs against a person located in an area of a building that is used in connection with court proceedings.

The Administrative Office of the Courts (AOC) must develop a standard signage form notifying the public of the possible enhanced penalties under the act. Each sign must be posted and prominently displayed at any public entrance to a courtroom.

### **Amended Bill Compared to Engrossed Bill:**

The amendment limits the areas where an assault can take place in order for it to be punishable as an Assault three offense (instead of an Assault four) and where a "crime against persons" takes place in order for it to be used as an aggravating factor for an exceptional sentence. The offense must specifically take place in a courtroom, jury room, judge's chamber, or any waiting area or corridor immediately adjacent to a courtroom, jury room, or a judge's chamber; the offense must occur during times when the courtroom, jury room, or judge's chamber is being used for judicial purposes during court proceedings; and signs must have been posted at the time the offense occurred. The AOC must develop a standard sign to notify the public of the possible enhanced penalties under the act.

The amendment restores the provision that allows courts to consider an assault against a judicial officer, court-related employee, or county clerk, as an aggravating factor for purposes of sentencing.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

## **Staff Summary of Public Testimony:**

(In support) It appears that incidences of violence are on the rise nationwide. In Washington there have been a total of seven instances of violence in courthouses from 2009 to 2012. Court security was present in five out of those seven cases which proves that security alone is sometimes not a deterrent for preventing these crimes.

There is a myriad of people that access courts every day for a variety of issues. The courthouse is one of those places in society where the accused and the victims are driven to be together in the same room at the same time in order for their disputes to be resolved. Courthouses have a lot of vulnerable people and while some people are there for happy occasions, there are times when people are there as a victim or an offender while they are experiencing extreme stress in their life.

Under current law, an assault in a courthouse that occurs against a court employee can be elevated to an Assault three offense, but if that same assault occurs against a crime victim it is not elevated and the crime remains an Assault four offense. This fundamentally is against one of the basic points of the court system relating to providing equal protection under the law. This bill will treat all citizens equally and will punish people based on where the offense takes place as opposed to who the person is.

Protecting victims of domestic violence and holding abusers accountable for their behavior is equally important to Washington's response to domestic violence. Victims are often scared to go to court particularly if their abuser has threatened to retaliate. A clear message needs to go out that violence in our courthouses will not be tolerated and that the state plans to prioritize the safety of victims and those that support them.

(Opposed) The bill as drafted is overly broad and is interpreted to include when an offender assaults a person in any place of the building that is used in connection with a court proceeding, which can include the maintenance shed, the corridors, stairwells, and even the elevators. A court proceeding does not have to be taking place at the time of the assault, but as long as the building is being used for judicial purposes then that Assault crime can be elevated to an Assault three offense. Prosecuting cases is always up to prosecutorial discretion. However, a situation may be when jurors that have been deliberating over a difficult case for hours and one juror throws a cup of water at another juror, then under this bill that assault, which would normally be a gross misdemeanor offense, would now be increased to a felony offense. Under this bill, any type of harmful or offensive touching would now be elevated to an Assault three offense.

In addition, the portion of this bill relating to aggravating factors could potentially increase a person's standard range punishment by years merely because that assault occurred in a courthouse versus outside in the parking lot. This bill is really changing the proportionality in response to the level of actual harm and intent that occurs in these potential cases. Under current law, for a gross misdemeanor the court has more authority and could order the person to a suspended sentence, chemical dependency treatment, or even anger management treatment to address those issues, as opposed to if that crime was treated as a felony offense.

Many of the past instances of assaults taking place in Washington courthouses are already addressed by current laws for felony offenses.

**Persons Testifying:** (In support) Brian Moran, Office of the Attorney General; Mette Earlywine, Washington Coalition Against Domestic Violence; and Brian Enslow, Washington State Association of Counties.

(Opposed) Alex Frix, Washington Association of Criminal Defense Lawyers and Washington Defenders Association.

**Persons Signed In To Testify But Not Testifying:** None.