
Community Safety Committee

HB 1591

Brief Description: Providing remedies for defendant survivors of domestic violence, sexual assault, or human trafficking.

Sponsors: Representatives Taylor, Goodman, Parshley, Simmons, Ormsby, Scott, Doglio, Salahuddin, Reed and Davis.

Brief Summary of Bill

- Establishes a sentencing alternative for defendant survivors of domestic violence, sexual assault, or human trafficking, and authorizes the sentencing court to impose the sentencing alternative or a reduced sentence on a qualifying person.
- Authorizes sentencing courts to resentence a person and vacate a person's record of conviction on the basis that the person is a survivor of domestic violence, sexual assault, or human trafficking.

Hearing Date: 2/10/25

Staff: Michelle Rusk (786-7153).

Background:

Sentencing Reform Act.

The Sentencing Reform Act (SRA) provides a determinate sentencing system in which sentencing courts generally impose sentences within a standard range. The standard range is determined by reference to a grid, which is based on the defendant's prior criminal history and the severity of the present offense. The grid provides the base sentence, but additional sentencing policies may increase or decrease the base sentence. For example, a sentencing enhancement adds a specified amount of time to the defendant's base sentence when the offense

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involves certain conduct. The SRA also authorizes courts to impose exceptional sentences either above or below the standard range for substantial and compelling reasons. The SRA provides a nonexhaustive list of mitigating circumstances that courts may consider when deciding whether to impose exceptional sentences below the standard range.

Vacating Records of Conviction.

A court may vacate a person's record of conviction to remove an offense from the person's criminal history if the person meets certain eligibility requirements, which vary depending on the nature of the conviction. Certain types of convictions do not qualify to be vacated.

Domestic Violence, Sexual Assault, and Human Trafficking.

Under the SRA, a victim of domestic violence is an intimate partner or household member who has been subjected to the infliction of physical harm or sexual and psychological abuse by an intimate partner or household member as part of a pattern of assaultive, coercive, and controlling behaviors directed at achieving compliance from or control over that intimate partner or household member. Domestic violence includes, but is not limited to, the following crimes when committed either by one family or household member against another or one intimate partner against another intimate partner: Rape, Stalking, Assault, Coercion, Kidnapping, and Unlawful Imprisonment. Intimate partners are:

- spouses or domestic partners;
- former spouses or former domestic partners;
- persons with a child in common regardless of whether they have ever been married or lived together;
- adults presently or previously residing together who have or have had a dating relationship;
- persons 16 years of age or older presently or previously residing together who have or have had a dating relationship; and
- persons 16 years of age or older with whom a person 16 years of age or older has or has had a dating relationship.

The SRA also establishes that a victim of sexual assault is a person who is a victim of a sexual assault offense, nonconsensual sexual conduct, or nonconsensual penetration, and suffers physical, emotional, financial, or psychological impacts as a result. Sexual assault offenses include, but are not limited to, sex offenses such as Rape and Child Molestation. Penalties for Trafficking offenses are also established in the SRA, which occurs when a person recruits, harbors, transports, transfers, provides, obtains, buys, purchases, or receives by any means another person knowing, or in disregard of the fact, that fraud, force, or coercion will be used to cause the person to engage in conduct including forced labor, involuntary servitude, or sexually explicit acts.

Summary of Bill:

Sentencing Alternative for Survivors of Domestic Violence, Sexual Assault, or Human Trafficking.

Eligibility Criteria.

A sentencing court may impose a reduced sentence or sentencing alternative, as provided below, when sentencing a person for one or more crimes where, at the time of the offense:

1. the defendant was a victim of domestic violence, sexual assault, or human trafficking and subjected to substantial physical, sexual, or psychological abuse inflicted by an intimate partner or family or household member;
2. the domestic violence or abuse suffered by the defendant was a significant contributing factor to the defendant's criminal conduct; and
3. generally applicable sentencing requirements would be unduly harsh given the nature and circumstances of the crime and the defendant's history, character, and condition.

Points one through three enumerated above constitute the eligibility criteria. Prior to imposing a reduced sentence or sentencing alternative, the court must make findings as to whether the person meets the eligibility criteria. The court may impose the reduced sentence or sentencing alternative regardless of whether the person previously raised any defense related to domestic violence or abuse. The court may consider the following when making its specific findings as to whether the domestic violence or abuse a defendant suffered was a significant contributing factor to the criminal conduct:

- whether the underlying crime was committed against an intimate partner who committed domestic violence against the person;
- whether the person has been diagnosed with or treated for any behavioral health conditions related to prior victimization;
- evidence that the person's prior victimization affected the person's perception of safety and security;
- evidence that the person's prior victimization affected the person's perception of the ability to receive help through law enforcement or other government entities;
- evidence that the person's prior victimization has limited the person's ability to achieve financial independence; and
- any other factors the court deems relevant.

The court may consider evidence including, for example, oral and written arguments, statements from third parties regarding the domestic violence, sexual abuse, or human trafficking, and medical records and documents.

Reduced Sentence or Sentencing Alternative.

If the court finds that a defendant meets the eligibility criteria, it may, in its discretion:

- impose a sentence below the standard range and below any mandatory minimum terms;
- depart downward from any sentencing enhancements; or
- impose the sentencing alternative described below.

The sentencing alternative allows the court to waive the standard range sentence and any applicable enhancements and instead impose:

1. an extended term of community custody with a reduced term of confinement; or
2. an extended term of community custody without any term of confinement.

Points one and two enumerated above constitute the sentencing alternative. The court must waive the standard range and impose the sentencing alternative if a person meets the eligibility criteria and the court finds the sentencing alternative is appropriate. To help the court determine whether the sentencing alternative is appropriate for an otherwise eligible defendant, the court may order the Department of Corrections (DOC) to complete a risk assessment or chemical dependency screening report.

The court has complete discretion to determine the term of confinement and community custody, provided that the combined length of both does not exceed the standard range for the underlying crime including any enhancements.

Community Custody.

For any person serving community custody under the sentencing alternative:

- the court and the DOC may impose conditions they deem appropriate;
- the DOC must report to the court any violations of conditions;
- the court may order the defendant to report to court at any time during community custody to evaluate the person's compliance;
- the court may modify community custody conditions or impose sanctions for violations;
- the court may order the person to serve a term of total confinement within the standard range if a person violates conditions.

Resentencing for Survivors of Domestic Violence, Sexual Assault, or Human Trafficking.

A person serving a sentence of at least eight years imposed prior to the effective date of the bill may petition the court for resentencing on the basis that:

- the defendant was a victim of domestic violence, sexual assault, or human trafficking and subjected to substantial physical, sexual, or psychological abuse inflicted by an intimate partner or family or household member;
- the domestic violence or abuse suffered by the defendant was a significant contributing factor to the defendant's criminal conduct; and
- generally applicable sentencing requirements would be unduly harsh given the nature and circumstances of the crime and the defendant's history, character, and condition.

A petition must include at least two pieces of evidence corroborating the applicant's claim of eligibility. The court may deny a petition for resentencing without a hearing. If the court orders a hearing, the court may consider the same factors and evidence it would have considered at a sentencing hearing after the effective date of this bill, and other relevant facts or circumstances.

The prosecuting attorney must make reasonable efforts to notify victims and survivors of victims about the petition and hearing date and provide access to related services. The court must provide an opportunity for victims and survivors of victims to present a statement personally or by representation.

If the court grants the petition and resentsences the person, any new sentence may not be greater than the original sentence. If the court denies resentencing, the court must inform the petitioner

and enter an order including written findings of fact and reasoning. A petitioner may appeal a denial or a new sentence imposed.

Vacating Records of Conviction for Survivors of Domestic Violence, Sexual Assault, or Human Trafficking.

A person who committed a felony or misdemeanor offense prior to the effective date of this bill may apply to the court for a vacation of the person's record of conviction on the basis that the person meets the same standard used for the sentencing alternative or reduced sentence.

In reviewing a person's application, the court may consider the same factors and evidence it would have considered at a sentencing hearing after the effective date of this bill. However, the court may instead rely solely upon the person's sworn testimony at a hearing before the court. If the court finds that the person qualifies, the court may, in the interest of justice, waive any statutory restrictions relating to vacating convictions and proceed with vacating the person's record of conviction.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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