

# HOUSE RESEARCH

## Bill Summary

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### Overview

This bill contains numerous items related to domestic abuse. The bill:

expands the definition of domestic abuse to include interference with an emergencyemergency call and criminal harassment;

clarifies that there are no residency requirements for applying for an order forfor protection;

provides that when an individual who is served with an order for protection at aa location the order prohibits the offender from being, the offender must be given a reasonable opportunity to leave the location in the presence of the officer serving the order;

expands the past offenses that may be used to enhance the penalty for violation of anan order for protection to include assault in the fifth degree, domestic assault, and criminal harassment and defines the offenses that may be used to enhance a penalty as a "qualified domestic violence-related offense";

requires courts to order domestic abuse offenders to complete a domestic abuseabuse counseling program or educational program as a condition of a stayed sentence or as part of an order for protection proceeding and sets standards for these programs;

amends the factors the court must consider in deciding whether to release or detain aa person arrested for domestic abuse or harassment pending trial, expands application of these factors to violations of orders for protection and violations of domestic abuse no contact orders, requires written findings, and specifies release conditions for the court to consider in releasing an arrested person;

allows certain statements regrading domestic abuse to be admissible as evidence eveneven if the person making the statement recants;

establishes a grant program to increase supervision of high risk offenders and requiresrequires adoption of a risk assessment scale;

requires the interagency task force on domestic violence and sexual assault preventionprevention to study issues related to gender and domestic violence and to assess the needs of men who are victims of domestic abuse; and

appropriates money to increase supervision of high risk domestic abuse offenders,offenders, monitor and track judicial responses to domestic abuse, provide community and advocacy services in unserved and underserved counties, provide safe housing and services for men who are victims of domestic violence and their children, provide per diem funding for shelters and safe homes, and provide grants for criminal justice intervention programs;

repeals the domestic abuse investigation fee.

- 1        **Definitions.** Expands the definition of domestic abuse in the domestic abuse act to include interference with an emergency call and criminal harassment.
- 2        **Court jurisdiction.** Specifies that there are no residency requirements that must be met for a person to petition for an order for protection. Also makes a punctuation change to provide that jurisdictional requirements are satisfied if the application for relief is filed in the court having jurisdiction over dissolution actions *or* in the county of residence of either party.
- 3        **Relief by the court.** Current law allows a court to provide certain relief in a proceeding for an order for protection under the domestic abuse act, including ordering the abusing party to participate in treatment or counseling services. This provision is amended to allow the court to require the abusing party to attend a domestic abuse counseling or educational program (see sections 5 to 8).
- , 11     **Violation of an order for protection; fifth degree assault; domestic assault; and criminal**  
toto 13, **harassment law.** Amends the penalty provisions of the order for protection, fifth degree  
15 to assault, domestic assault, and criminal harassment laws to ensure they apply consistently to  
17 violations of similar laws of another state, the United States, the District of Columbia, tribal lands, and United States territories. Also makes consistent the list of offenses that may be used to enhance a penalty for a violation of these laws, which in many cases involves adding new offenses to the list of offenses that will result in an enhanced penalty. The offenses that may be used to enhance a penalty for any of these laws are:
  - violation of an order for protection,
  - assault in the first through fifth degree,
  - domestic assault,
  - criminal sexual conduct in the first through fourth degree,
  - malicious punishment of a child,
  - violation of a harassment restraining order,
  - terroristic threats, and
  - criminal harassment.

Most of these provisions are made consistent through reference to the definition for a "qualified domestic violence-related offense." This definition, created in section 10, identifies the offenses that may be used to enhance a penalty for certain offenses. Also makes technical changes to current law.

Section 4 also clarifies that the probable cause sufficient for finding a violation of an order for

protection is probable cause that the person knowingly violated the order. Provides that if the person is served with the order at a location where the person's presence constitutes a violation, the person shall be given a reasonable opportunity to leave the location in the officer's presence.

5 **Purpose; standards for domestic abuse counseling programs and educational programs for offenders.** States that the purpose of the standards is to establish minimum operating guidelines for persons and programs providing counseling or educational programs for court-ordered domestic abuse offenders and abusing parties. Specifies that the purpose of these programs is to stop the violence, work toward victim safety, and ensure procedures to address program violations and ongoing violence.

6 **Definitions.** Defines the following terms: "abusing party," "counseling program; educational program," "domestic abuse," "offender," "program," "release of information," and "victim."

7 **Domestic abuse counseling program or educational program required.**

**Subd. 1. Court order to domestic abuse counseling program or educational program.**

States that, when a court stays imposition or execution of sentence for a domestic abuse offense and places an offender on probation, the court must order that, as a condition of the stayed sentence, the offender participate in and successfully complete a program that satisfies the requirements of section 8, unless the court determines some other sentence meets or exceeds the purposes set forth in section 5, paragraph (b). Specifies that a court must consider a correction's agent's recommendation in the presentence domestic abuse investigation regarding requiring the offender to complete a counseling or educational program. Also authorizes a court to order an abusing party in a domestic abuse act proceeding to complete a counseling or educational program.

If a program is not available or if the court makes written findings that a program is inappropriate based upon an offender's or abusing party's mental illness, the court may send the offender to a counselor who follows the requirements of section 8 and is knowledgeable about domestic abuse issues. A program is deemed available if within a reasonable travel distance from the offender's home.

Requires an offender to complete at least 24 sessions or 30 hours of a program unless the offender's probation agent recommends fewer sessions based upon good cause.

Allows the court to require the offender to participate in the program up to the entire amount of time the offender is on probation. Allows the court to order that the offender be required to stay in the program as long as the program counselor or facilitator requires, provided this time period is not longer than the person's term of probation. Authorizes the court to send an offender to a culturally specific program where available and appropriate.

**Subd. 2. Chemically dependent offenders.** States that, if the offender or abusing party has a diagnosable chemical dependency problem, the court shall require the offender to complete chemical dependency treatment as a condition of probation, if reasonable.

8 **Standards for domestic abuse counseling programs and educational programs.**

**Subd. 1. Length of program.** Provides programs must require offenders and abusing parties to attend a minimum of 24 sessions and that each session must last at least one and one-half hours. Creates an exception in situations where a probation agent has recommended fewer sessions.

**Subd. 2. Policies.** Requires programs to have a written policy that requires counselors and facilitators to report to the court and to the offender's probation or corrections officer any threats or acts of violence by the offender or abusing party, any violations of court orders, and any violations of program rules that result in the offender's or abusing party's termination from the program. Requires programs to have policies that counselors and facilitators be violence free in their own lives. Also requires programs to have written policies requiring that counselors and

facilitators hold offenders solely responsible for their behavior.

**Subd. 3. Intake.** Requires each program to conduct an intake process with each offender and abusing party that looks for chemical dependency problems and possible risks the offender or abusing party might pose to self or others. Requires appropriate referrals and notice to be given as needed.

**Subd. 4. Notice to victim.** Requires the program to notify the victim of the circumstances if the offender or abusing party is reported back to the court or terminated from the program, unless the victim requests otherwise.

**Subd. 5. Release of information.** Requires programs to require court-ordered offenders and abusing parties to sign a release of information authorizing communication with the court, the offender's probation or corrections officer, other providers, and the victim. Specifies that an offender or abusing party may not enter the program without signing a release.

**Subd. 6. Victim privacy.** Prevents a counselor or facilitator from eliciting information from a victim that the victim does not want to provide. Requires a counselor or facilitator who contacts a victim to notify the victim of the right not to provide any information. The counselor or facilitator also must notify the victim of how any information provided will be used and with whom it will be shared. The counselor or facilitator must obtain the victim's permission before eliciting information from the victim or sharing information provided by the victim.

Requires programs to have written policies that require counselors and facilitators to inform victims of the confidentiality of information. Requires programs to maintain separate files for information pertaining to the offender or abusing party and to the victim. Also specifies that, if a counselor or facilitator contacts the victim, the counselor must provide the victim with a referral for support services.

**Subd. 7. Confidentiality.** Prohibits programs from disclosing confidential communication made by the offender or abusing party without the consent of the offender or abusing party. Creates an exception for mandatory disclosure to a victim of the threat of imminent danger based upon information provided by the offender or abusing party.

**Subd. 8. Program setting.** Specifies that the program must provide services in a group setting unless the offender or abusing party would be inappropriate in a group setting. Also requires programs to provide separate sessions for male and female offenders.

**Subd. 9. Marriage or couples counseling.** Prohibits marriage or couples counseling from being offered until the offender or abusing party has completed the minimum number of court-ordered sessions and the counselor or facilitator reasonably believes that the violence, intimidation, and coercion has ceased and the victim feels safe to participate.

**Subd. 10. Program completion; report.** Requires the program to report to the court when the offender or abusing party has completed the program.

**Subd. 11. Coordination.** Requires programs to coordinate with the court, probation and corrections officers, battered women's and domestic abuse programs, child protection services, and other providers to promote victim safety and offender accountability.

9 **Certain out-of-court statements regarding domestic abuse admissible.** Allows admissibility of certain out-of-court statements made by a victim of domestic abuse if:

the court finds, in a hearing outside the jury's presence, that the time, content, and circumstances of the statement provide sufficient indicia of reliability;

the domestic abuse victim testifies at the proceeding or, if unavailable to testify, there is corroborative evidence of the act; and

the proponent of the statement notifies the adverse party of the proponent's intention to

offer the statement in sufficient time for the adverse party to prepare a response.

Specifies that, in the absence of other factors indicating unreliability, recantation by the one making the statement is not a sufficient reason to deny admissibility of the statement.

10 **Qualified domestic violence-related offense.** Adds a definition of "qualified domestic violence-related offense" to the criminal code. This definition is used in the domestic abuse act, fifth-degree assault, harassment restraining order, and criminal harassment laws to enhance the criminal penalties for these crimes (see sections 4, 11 to 13, and 15 to 17). The term is defined to include violations of orders for protection, first through fifth degree assaults, domestic assaults, first through fourth degree criminal sexual conduct, malicious punishment of a child, violations of harassment restraining orders, terroristic threats, and criminal harassment. The term also includes violations of similar laws of another state, the United States, the District of Columbia, tribal lands, or United States territories.

15 **Report.** Requires the report submitted by a corrections agent as part of a presentence domestic abuse investigation to include a specific recommendation for the defendant to complete a domestic abuse counseling or educational program (sections 5 to 8).

19 **Director's responsibilities.** Adds to the responsibilities of the director of domestic violence and sexual assault prevention and to the interagency task force on these issues. Adds the duty of studying issues involving domestic violence and sexual assault by both men and women and presenting findings and recommendations resulting from these studies to all branches of government.

20 **Grant program to increase supervision of high risk domestic abuse offenders.**

**Subd. 1. Establishment.** Requires the commissioner of corrections to administer a grant program and make grants to state and local correctional agencies supervising high risk domestic abuse offenders.

**Subd. 2. Eligibility.** Provides that state and local correctional agencies are eligible to apply for a grant if they adopt and implement a specialized risk assessment scale to identify high risk domestic abuse offenders. Specifies eight factors the scale may include and allows it to include other factors.

**Subd. 3. Report.** Requires the commissioner to report to the legislature by January 15, 2003, on grants made under this section.

21 **Bail in cases of domestic abuse, harassment, violation of an order for protection, or violation of a domestic abuse no contact order.** Expands the application of the bail provisions that apply to domestic assault and harassment cases to include cases involving a violation of an order for protection and a violation of a domestic abuse no contact order. Amends current law regarding how the court should make the decision whether to detain or release a person pending trial. States that, in making this decision, the court shall review the facts of the arrest and detention and determine whether release of the person poses a threat to the alleged victim or another family or household member, poses a threat to public safety, or there is a substantial likelihood the person will fail to appear at subsequent proceedings. Requires the officer in charge of the police station or the county sheriff to consider the same factors in determining whether to issue a citation in lieu of continued detention. Specifies that the court must make findings on the record regarding these factors.

Allows the judge to impose conditions of release or bail to protect the alleged victim or other family or household members and to ensure the appearance of the person at subsequent proceedings. Specifies the conditions the court may include in an order. These conditions include:

enjoining the person from threatening to commit or committing acts of domestic abuse or harassment against the alleged victim or other family or household members or from violating an order for protection;

prohibiting the person from harassing, annoying, telephoning, contacting, or otherwise communicating with the alleged victim, either directly or indirectly;

directing the person to vacate or stay away from the alleged victim's home and any other location the victim is likely to be;

prohibiting the person from possessing a firearm or other weapon;

prohibiting the person from possessing or consuming alcohol or controlled substances; and

identifying any other matter required to protect the victim's safety and ensure the person's appearance at subsequent proceedings.

This section also clarifies that it is the prosecutor's or prosecutor's designee's responsibility to present relevant information about the victim's or victim's family's account of the alleged crime to the judge to be considered in making a decision about the arrested person's release.

Also defines the terms "harassment," "violation of an order for protection," and "violation of a domestic abuse no contact order." Makes other technical changes.

22 **Study; interagency task force on domestic violence and sexual assault prevention.** Requires the interagency task force on domestic violence and sexual assault prevention to study issues related to gender and domestic violence and to assess the needs of male victims of domestic violence and false assault accusations. Requires the director of domestic violence and sexual assault prevention to report to the legislature on the task force's study, findings, and recommendations.

23 **Appropriations.**

**Subd. 1. Corrections.** Appropriates \$5,000,000 to the commissioner of corrections for a grant program to increase supervision of high risk domestic abuse offenders who are on probation, conditional release, or supervised release by means of caseload reduction. Provides that these grants shall be used to reduce the number of offenders supervised by officers with specialized caseloads to an average of 35 offenders.

**Subd. 2. Public Safety.** Appropriates the following amounts to the commissioner of public safety:

\$300,000 for grants to organizations to monitor and track judicial responses to domestic assault cases in three judicial district

s;

\$246,000 for grants to community advocacy and outreach programs for battered women to provide services in unserved and underserved counties;

\$100,000 for grants to enable programs to provide safe housing and services to men who are domestic abuse victims and their children;

\$7,500,000 for per diem funding for battered women shelters and safe homes; and an unspecified amount for grants for criminal justice intervention programs to ensure a program exists in every county.

24 **Repealer.** Repeals the domestic abuse investigation fee.

25 **Effective dates.** Sections 4, 10 to 14, and 16 to 18 are effective August 1, 2001, and apply to crimes committed on or after that date. The remaining sections are effective July 1, 2001.