



AG REQUEST LEGISLATION – 2009 SESSION

SUPPORTING LAW ENFORCEMENT: DOMESTIC VIOLENCE SANCTIONS

BACKGROUND:

- Repeat felony domestic violence offenders often begin their criminal behavior as misdemeanor domestic violence offenders, yet current law does not allow the scoring of those offenses when sentencing the worst offenders--those convicted of felony domestic violence.
- The lack of sentence multipliers for domestic violence felonies is a serious problem. Unlike drug, sex, burglary, car theft and felony traffic offenses, where multiplying penalties significantly increase an offender's sentence, the Sentencing Reform Act (SRA) does not multiply offender scores for felony crimes of domestic violence.
- Today the label of "domestic violence" means nothing when it comes to punishments, as the designation is not required to be plead and proven.

THE PROBLEM:

Roughly 25 years after the passage of the Domestic Violence Protection Act, our laws do not treat domestic violence with the seriousness it demands. Weakness in current law results in mild sentences for repeat offenders. Extra sentencing consideration is allowed for serial drug offenders, car thieves and other chronic criminals, but not for domestic abusers. This leaves too many victims unprotected.

LEGISLATION: ENSURING PUNISHMENT FOR DOMESTIC VIOLENCE OFFENDERS

The Attorney General's Office is requesting legislation to amend the appropriate RCWs and create a new section. The changes would:

- Score prior misdemeanor domestic violence history when sentencing felony domestic violence convictions.
- Multiply, or count more heavily, a certain class of prior domestic violence felony convictions by adding language to RCW 9.94A.525 (offender score calculation) that would give two points to the certain domestic violence crimes, including: Felony Violation No Contact Order/Protection Order (assault), Felony Harassment Domestic Violence, Felony Stalking Domestic Violence, Burglary 1 Domestic Violence, and Kidnapping 1 and 2 Domestic Violence.
- Amend 9.94A.030 (Sentencing Reform Act definitions) to add "domestic violence," defined as a criminal offense committed between a defendant and a victim having a relationship as defined in RCW 10.99.020 or 26.50.010.
- Make the designation of "Domestic Violence" mean something by requiring that it be pled and proven. The benefit of pleading and proving domestic violence is significant as history at the felony level would be given new meaning and repeat offenders would receive tougher sentences

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http://seattlepi.nwsourc.com/opinion/378135_dved.html

Domestic violence: Stiffen penalties

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Seattle Post-Intelligencer editorial board

Stopping domestic violence is a cause that seems to receive appropriately serious attention from the public. So it's rather shocking to learn that judges in this state have to disregard some previous convictions when sentencing abusers.

That ought to change. The state Attorney General's Office has a domestic violence task force that is looking at possible changes to sentencing guidelines for those convicted of a felony in such cases.

As the Seattle P-I's Ruth Teichroeb reported Friday, sentencing guidelines generally keep judges from considering a history of misdemeanor abuse convictions when determining punishment for a felony domestic violence crime. That flies in the face of the way many other crimes are handled and contradicts nearly 30 years of laws requiring that domestic abuse be treated as seriously as other crimes.

Judges have some limited ability to impose harsher, or milder, sentences than guidelines generally allow, but that doesn't happen very often. So, someone can commit repeated misdemeanor abuse offenses and still wind up serving little or no jail time for a felony. That's wrong, and it's likely ineffective in discouraging repeat offenses.

Chris Johnson, policy director for the AG's office, said the task force is working with local prosecutors around the state on shaping a sentencing proposal. The package could also include provisions to ensure felony charges in more instances of chronic abuse.

One beneficial effect of greater accountability for offenders might be the empowerment of more victims. Over time, Johnson said, more victims might develop confidence that the offender will be jailed long enough to allow them to forge new lives.

Whatever the future benefits, though, it's time to do the right thing. The Legislature should make domestic violence sentencing guidelines strong enough to treat the crime seriously, just as the public expects.

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Cracking down on chronic batterers Task force considers toughening sentencing law

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By RUTH TEICHROEB
P-I REPORTER

Damon Overby didn't have to worry about doing hard time in a state prison when he pleaded guilty this year to his eighth domestic violence-related offense -- choking his girlfriend with a towel in a Seattle hotel.

Five different women had no-contact orders against him by then. Yet the King County Superior Court judge who sentenced Overby could not factor in his six past misdemeanors for abusing women.

One previous domestic violence-related felony barely increased his offender score, the measure used to determine sentencing.

A car thief with a record like that would have been guaranteed more than three years in a state correctional facility. Overby, 36, was sentenced to 12 months of work release, although he ended up jailed because of a probation violation.

The reason for the vastly different penalties is that the sentencing of batterers has changed little in the almost 30 years since legislators passed Washington's first law requiring the legal system to treat domestic violence as seriously as any other crime.

The public pressure that led to stiffer sentences in recent years for prolific auto thieves, drug dealers and chronic sex offenders has so far not affected repeat abusers.

"These individuals do an enormous amount of damage," said David Martin, senior deputy prosecutor in the King County Prosecuting Attorney's Office, who estimates that about 10 percent of abusers are chronic offenders. "One would think their history would matter for sentencing, but it doesn't."

That could be about to change.

A task force on domestic violence set up by the state Attorney General's Office is now considering whether sentencing reform is needed to crack down on those who show up over and over in courts across the state.

"There should be at least as much accountability for abusers as for car thieves," said Susan Adams, director of the Crystal Judson Family Center and task force member. "It makes it tough to convince a victim to go forward if they see that all that will happen is a slap on the wrist."

A history of domestic violence-related misdemeanors has no effect on the sentence of someone who then commits an abuse-related felony. By contrast, an offender with drunken-driving misdemeanors faces a much tougher sentence if



Damon Overby pleaded guilty earlier this year to his eighth domestic violence-related offense. Yet the King County Superior Court judge who sentenced Overby wasn't allowed to factor in his history of six misdemeanor convictions for abusing women. (Scott Eklund / P-I)



subsequently convicted of a felony traffic offense. The same is true of crimes from auto theft to drug dealing. A repeat felony conviction of the same type also significantly increases sentencing for those crimes -- something that is not true with repeat domestic violence-related felonies.

"What message does it send? The message is that the sentencing in these cases just isn't a priority," said Martin, a task force member.

No one knows if tougher sentencing would be as big a deterrent for abusers as it's been for auto thieves. Auto theft in King County has dropped by 50 percent since a crackdown on repeat offenders.

But it's well documented that batterers can escalate if left unchecked or repeatedly face minimal consequences -- counseling, fines and short jail sentences.

"There are many survivors who don't see the law as helpful to them," said Merrill Cousin, executive director of the King County Coalition Against Domestic Violence. "The law could have more teeth behind it."

Overby's ex-wife, Marcie Taysom, believes repeat offenders deserve stiffer sentences.

"Damon should not get eight chances," Taysom said in a recent phone interview from her home in Idaho. "He's never gotten prison and the things he's done are pretty heinous. He just keeps getting away with it."

When she met Overby at a dance in 1988, Taysom was immediately attracted to the 6-foot, 1-inch teenager. "Damon is extremely good looking. He was unbelievably charming," Taysom said.

Looking back, there were red flags she ignored. Overby fathered a child at age 15 and had abused cocaine, she said.

Taysom soon moved in with Overby but their relationship was rocky. After an argument in November 1989, Overby came to collect his belongings.

"He punched me in the face and ripped the phone out of the wall. Then he tried to strangle me," Taysom said. He dragged her around the apartment by her hair and lit papers on fire. She huddled on the floor until he left and then went for help.

Overby, who had just turned 18, was found guilty in King County District Court of fourth-degree assault. He served five days in jail. In 1990, he violated probation and served five more days, according to court records.

They married in October 1990 and had a son in April 1992. Overby drank heavily, flew into rages and attacked her, Taysom said. He pulled her hair and once pushed her head through a window.

"He told me if I ever left him, he'd kill me," she said. "I was always afraid to call the police."

When he began to lash out at their young son, Taysom said she finally fled to a domestic violence shelter. She filed for divorce in 1994, saying that Overby had abused her throughout their relationship, something he denied.

Overby said his "temper problem" began after he suffered a serious head injury in a motorcycle accident in 1989 -- although for years he wouldn't admit that something was wrong.

"That affects my emotions," said Overby in an interview this week. "I'm not this monster that is a batterer."

Back then, he also had a drinking problem that made it hard for him to handle frustration or anger, he said. He's been sober for 11 years. "When I was younger I had a huge chip on my shoulder," he said.

In September 1997, Kirkland police responded after a neighbor reported screaming.

Overby's fiancée said they had argued after he came home from drinking, according to court records. Overby pushed her into a wall and she hit her head as their 4-month-old daughter sat nearby in a car seat. He pressed his hand against her face, shoving her head into the wall again and yanked the phone out of the wall. When police arrived and tried to cuff Overby, he attacked two officers, who sustained minor injuries.



Overby pleaded guilty in King County Superior Court in February 1998 to two misdemeanors and third-degree felony assault and was sentenced to six months in jail. A pre-sentence report said Overby had enrolled in alcohol treatment and “moral responsibility” counseling with his priest. The judge ordered domestic violence treatment.

Four years later, a different girlfriend filed for a protection order in King County Superior Court, saying Overby had “continuously/repeatedly displayed uncontrollable rage/anger” and that she was “afraid” now that she wanted to leave him. The woman soon withdrew her request, saying they had reconciled.

The reconciliation didn’t last. In July 2003, Lynnwood police arrested Overby after the same woman accused him of screaming, spitting and throwing a notebook at her during a chance meeting.

“She said something snippety as she walked by. It infuriated me,” Overby said recently. He was convicted of fourth-degree misdemeanor assault, served 20 days in jail and agreed to get counseling. The ex-girlfriend obtained a no-contact order.

In August 2006, a woman approached a Mountlake Terrace police officer investigating a two-car collision involving Overby. The woman told the officer that her boyfriend, Overby, had assaulted her just before the accident. The couple, who met a month before at an AA meeting, had been arguing when Overby “pushed her hard in the chest,” causing her to fall and hit her head, according to a police report.

“She stated that she really liked him because he was nine years sober and was very charismatic but that recently he had started belittling her,” the officer wrote. She said Overby made harassing phone calls, threw things and yelled in her face.

Overby denied her account, telling police that she had slapped him first and he shoved her in self-defense. He said he was a “trained chemical dependency professional” and blamed the dispute on his girlfriend’s drinking.

Despite his criminal record, Overby was licensed by the Department of Health as a registered counselor in 2004, although he was restricted to working under supervision. Department spokesman Bob Nicoloff said it’s not unusual that someone with a criminal record is licensed to work in addictions. Overby’s license is now under review because of his latest convictions, Nicoloff said.

Overby was charged with fourth-degree assault after the 2006 incident. Before the case went to trial, Overby violated a no-contact order, telling his victim to ignore a subpoena and say she’d been drinking the night of the incident, according to police records.

He pleaded guilty to the 2006 assault, received a suspended sentence and was ordered to attend domestic violence treatment. His victim wrote a letter asking that Overby’s charges be dismissed, saying: “I have come to love this man and I feel a sense of devotion and obligation to him based on both our histories of coming from broken and violent homes.”

Early in 2007, Overby started dating another woman and they moved into a Woodinville apartment six weeks later. They argued on their first day together and the woman said he slammed her into the coffee table and stepped on her neck until she “almost passed out,” according to court records.

Eleven days later, he pushed her into a wall and “pressed his tongue ring into my nose” when she was calling 911. Police arrested Overby and his girlfriend got a protection order. “He has said, ‘I don’t need no weapons, I’ll just snap your neck,’” she wrote in court documents.

Overby denied her allegations and said recently that he pleaded guilty to fourth-degree assault only to avoid a stiffer sentence for violating the previous no-contact order. He served six months in jail and a domestic violence assessment was ordered.

To celebrate his 36th birthday, he and his girlfriend of two months checked into a Seattle hotel in November 2007. Angered by an offhand remark, he attacked her in the bathroom, choking her with a towel while pinning her against a shelf, according to court records. The shelf broke, Overby lost his grip and she ran into the hall. A maid helped her call police and Overby fled.

This time he pleaded guilty to a third-degree felony assault in King County Superior Court and was sentenced on Feb. 11, 2008, to 12 months of work release -- a sentence that would have been shorter without two previous non-domestic-violence-related felonies.



The judge also ordered him to undergo batterer's treatment and a mental health assessment. The conviction violated his probation for the Woodinville assault so he ended up in jail until last week.

Would the threat of prison time have made a difference?

"It wouldn't have changed a damn thing," Overby said. "It wouldn't have touched the root of the problem. The root of the problem with me is being involved with the wrong element. Looking for love outside of myself."

A SERIAL ABUSER

1990: Damon Overby convicted of fourth-degree assault after attack on girlfriend.

1990: Married Marcie Taysom and had a son two years later.

1994: Wife flees to shelter and they divorce the next year.

1998: Overby pleads guilty to third-degree assault and two domestic violence-related misdemeanors after assaulting fiancée and two police officers.

2002: New girlfriend files for protection order, then withdraws request.

2003: Overby convicted of fourth-degree assault after assaulting girlfriend.

2004: Overby obtains registered counselor license from the state Department of Health.

April 2007: Pleads guilty to fourth-degree assault of girlfriend in Woodinville.

August 2007: Pleads guilty to fourth-degree assault of Mountlake Terrace girlfriend the year before.

February 2008: Pleads guilty to third-degree assault for choking a girlfriend at Seattle hotel.

Source: Court documents; police reports; interviews

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