

This measure creates the crime of obstructing the taking of wildlife and provides penalties. In addition, section 4 includes this new crime under the current provisions of chapter 9A.46 RCW.

Chapter 9A.46 RCW is aimed at making unlawful the invasion of a person's privacy through repeated acts and threats intended to harass that individual. The statute also allows for enjoining such activities. Because section 2 of Senate Bill No. 6480 also allows for enjoining violations, reference to chapter 9A.46 RCW is redundant and clouds the purposes of that act.

With the exception of section 4, Senate Bill No. 6480 is approved."

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## CHAPTER 266

[Substitute House Bill No. 752]

### ASSAULT IN THE SECOND DEGREE—REVISED

AN ACT Relating to assault in the second degree; amending RCW 9A.36.021; adding a new section to chapter 9A.36 RCW; prescribing penalties; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

**\*NEW SECTION. Sec. 1. A new section is added to chapter 9A.36 RCW to read as follows:**

**As used in this chapter, assault is:**

**(1) An attempt with unlawful force to inflict bodily injury, or a threatening act which a reasonable person would believe could lead to bodily injury, along with the apparent present ability to cause the injury, and where apprehension of injury is reasonably created; or**

**(2) The infliction of bodily injury by unlawful physical force or contact without the consent of the victim, including force or contact by any instrument or substance under the control of the person inflicting the bodily injury.**

**\*Sec. 1 was vetoed, see message at end of chapter.**

Sec. 2. Section 5, chapter 257, Laws of 1986 as amended by section 2, chapter 324, Laws of 1987 and RCW 9A.36.021 are each amended to read as follows:

(1) A person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree:

(a) Intentionally assaults another and thereby recklessly inflicts substantial bodily harm; or

(b) Intentionally and unlawfully causes substantial bodily harm to an unborn quick child by intentionally and unlawfully inflicting any injury upon the mother of such child; or

(c) Assaults another with a deadly weapon; or

(d) With intent to inflict bodily harm, administers to or causes to be taken by another, poison or any other destructive or noxious substance; or

(e) With intent to commit a felony, assaults another; or

(f) Knowingly inflicts bodily harm which by design causes such pain or agony as to be the equivalent of that produced by torture.

(2) Assault in the second degree is a class B felony.

**NEW SECTION.** Sec. 3. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1988.

Passed the House March 7, 1988.

Passed the Senate March 3, 1988.

Approved by the Governor March 24, 1988, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State March 24, 1988.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 1, Substitute House Bill No. 752 entitled:

"AN ACT Relating to assault in the second degree."

This measure attempts to create a statutory definition of assault and adds a standard of liability for assault in the second degree.

There has been widespread agreement, since the enactment of the sentencing reform act, that assault statutes have needed redefinition. In 1986 and 1987, the Legislature enacted measures which would clarify sentencing directions for these crimes, and allowed review by delaying the effective dates of those acts until July of this year. Substitute House Bill No. 752 is a further attempt at clarifying these statutes.

I believe this measure fails to achieve the ends sought when the assault statutes were originally addressed. The definition contained in section 1 is unclear and eliminates a standard of assault that has been accepted throughout the criminal justice system. That is, mere contact, without the consent of the victim, can be construed as an assault irrespective of any bodily harm that may result. When the Sentencing Guidelines Commission convened a meeting of interested parties to address the problems evident in the assault statutes, all members agreed that an indepth, long-term review of the assault definition was needed. That discussion has not taken place and I urge all involved members to again pursue that course.

Section 2 of this act adds an element of culpability to the harm caused by an assault. Historically, an offender's intention has been an element in defining the seriousness of a criminal act. Our criminal justice system punishes persons who realize the consequences of their unlawful acts to a greater degree than those who act in ignorance. On the other hand, we should prohibit persons from preying on defenseless victims and then hiding their crimes behind a contrived veil of ignorance.

The standard of strict liability that will take effect on July of this year would provide greater penalties for those individuals who assault and harm children but claim that the resulting injury was "unforeseen." At the same time, there is a possibility that unintended actions will be prosecuted as second degree assaults where a truly regrettable and unforeseen circumstance results. The Legislature has decided that a "recklessness" standard of liability will offer protection against such unwarranted charges while still allowing for successful prosecution of truly assaultive persons.

I do not agree with this view, and continue to believe that we must do more to protect children who suffer abuse at the hands of adults. Although I am signing section 2 into law, I strongly urge the Legislature to consider measures next year that would provide for stricter liability in the case of children, or provide other charges under which these abusers can be appropriately prosecuted in cases where substantial bodily injury results. I believe the Sentencing Guidelines Commission can be the starting point for this discussion in the interim.

With the exception of section 1, Substitute House Bill No. 752 is approved."

\*Reviser's note: In the pamphlet edition of the Session Laws, this read "foreseen." The change is a result of a corrected veto message transmitted by the Governor to the Code Reviser on April 26, 1988.