

HOUSE BILL ANALYSIS

HB 1131

Title: An act relating to domestic violence.

Brief Description: Increasing penalties for domestic violence.

Sponsors: Representatives Costa, Blalock, Chopp, Conway, Lantz, Keiser, Poulsen, O'Brien, Murray, Gombosky, Cody and Anderson; by request of Governor Lowry.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Edie Adams (786-7180).

Background: Domestic violence laws provide civil and criminal remedies to victims of domestic violence. In the criminal context, if a person commits a "domestic violence crime," the court may issue a no-contact order, prohibiting the defendant from having contact with the victim. A person commits a "domestic violence crime" if the person commits one of several specified crimes against a family or household member. Examples include assault, rape, stalking, malicious mischief, and criminal trespass. In the civil context, a person who is a victim of domestic violence may petition for a domestic violence protection order or, in domestic relations actions, for a restraining order.

Privileged Communication: The judiciary has inherent power to compel witnesses to appear and testify in judicial proceedings so that the court will receive all relevant evidence. However, the common law and statutory law recognize exceptions to compelled testimony in some circumstances, including "privileged communications." Privileges are recognized when certain classes of relationships or communications within those relationships are deemed of such importance that they are to be protected.

Under the common law, four criteria must be satisfied to find a privilege: (1) the communication must be made in confidence; (2) the element of confidentiality must be essential to the relationship; (3) the relationship is one that should be fostered; and (4) the injury of disclosing the communication must be greater than the benefit of disclosure.

Washington statutory law establishes a number of privileges, including communications between the following persons: (1) husband and wife; (2) attorney and client; (3) clergy and confessor; (4) physician and patient; (5) psychologist and

client; (6) optometrist and client; and (7) law enforcement peer support counselor and a law enforcement officer in certain circumstances.

Defense of Duress: When a person is prosecuted for a crime, the person may raise a number of defenses, which if proven, exculpate the person from criminal liability. The defense of duress is available if: (1) the defendant participated in the crime under compulsion by another person who used force or the threat of force to create an apprehension in the defendant's mind that he or she would suffer immediate death or grievous bodily injury for refusing to commit the crime; (2) the defendant's apprehension was reasonable; and (3) the defendant would not have participated in the crime except for the duress.

The defense of duress is not available if the crime is murder or manslaughter, or if the defendant intentionally or recklessly places himself or herself in a situation in which it is probable that he or she will be subject to duress.

In addition, the defense of duress is not established solely by a showing that a married person acted on the command of his or her spouse.

Assault in the Fourth Degree: An assault is any intentional offensive touching or striking of another person, regardless of whether injury results. Assault crimes are categorized into four degrees, depending on the offender's state of mind, the seriousness of the injury to the victim, the status of the victim, and the use of a weapon.

Fourth-degree assault, also called "simple assault," is a gross misdemeanor. Any assault that does not fall within the definition of one of the other degrees of assault is fourth-degree assault.

Mandatory Arrests: The Domestic Violence Prevention Act requires police officers to make arrests in cases of domestic violence calls under certain circumstances. An officer must make an arrest if the officer has probable cause to believe that the person violated provisions of a no-contact, protection, or restraining order. In addition, an officer must make an arrest if there is probable cause to believe that the person assaulted a family or household member within the preceding four hours.

Under common law, a police officer generally has qualified immunity from liability for the officer's actions if the officer carries out statutory duties according to prescribed procedures and if the officer acts reasonably. Under the domestic violence laws, a police officer is not liable in a civil action for: (1) an arrest that was based on probable cause; (2) good faith enforcement of a court order; or (3) any action or omission taken in good faith under the domestic violence chapter arising from an alleged act of domestic violence.

Community Supervision: Community supervision is a sentencing option that a judge may impose on a person convicted of a crime. Community supervision may include crime-related prohibitions, which are orders prohibiting conduct that directly relates to the circumstance of the crime for which the offender has been convicted. Crime-related prohibitions do not include orders directing the offender to participate in rehabilitative programs. If the offender receives a first-time offender waiver, community supervision may include rehabilitation, including requirements to devote time to employment or an occupation, undergo available outpatient or inpatient treatment, and pursue a course of study.

Address Confidentiality Program for Domestic Violence Victims: A victim of domestic violence may participate in a program to maintain the confidentiality of his or her address by applying to the secretary of state to have an address designated as the person's address. The application must be approved if the applicant makes a sworn statement that there is good reason to believe that the applicant is a victim of domestic violence and that the applicant fears for his or her safety or his or her child's safety.

If an applicant is accepted and certified as a participant in the program, the participant may request that state and local agencies use the address designated by the secretary of state as his or her address. The secretary of state may not make a program participant's address, other than the designated address, available for inspection or copying except: (1) to a law enforcement agency upon request; (2) by court order to a person identified in the order; or (3) if certification has been canceled.

Summary of Bill:

Privileged Communication: A privilege is created for communications made by a victim to a domestic violence counselor or advocate. "Domestic violence counselor or advocate" is defined as the employee or volunteer from a domestic violence program or shelter, victim assistance unit, program, or association, that provides information, medical or legal advocacy, counseling, or support to victims of domestic violence and who is designated by the victim to accompany the victim to the hospital and to proceedings concerning the alleged abuse or assault.

Defense of Duress: The limitation that the defense of duress is not established solely by showing that a married person acted on the command of his or her spouse is removed. Evidence that the defendant suffered a continuing pattern of physical or sexual abuse and was acting under the influence of or in response to that abuse at the time of the offense is admissible for consideration of the defense of duress.

Assault in the Fourth Degree: A second or subsequent conviction of assault in the fourth degree against the same victim is a class C felony and is ranked at seriousness level III under the Sentencing Reform Act.

Mandatory Arrests: The conditions under which an officer must make an arrest in a domestic violence case are expanded to require the officer to make an arrest when a person has assaulted a family member within the preceding 24 hours.

A police officer is immune from civil liability arising out of the good faith performance of the officer's duty to make an arrest of a person who has violated a no-contact, restraining, or protection order, or who has assaulted a family member.

Community Supervision: An offender convicted of domestic violence may be sentenced to up to two years of community supervision which may include batterer treatment in a state-certified program. The court must consider the existence of any no-contact, restraining, protection, or antiharassment order in setting the length and conditions of supervision.

The Sentencing Guidelines Commission (SGC) is required to study and establish non-binding guidelines for the imposition of court-ordered batterer treatment for persons convicted of domestic violence. The guidelines must address the different types of relationships that fall under the definition of domestic violence. The SGC must consult with the Washington State Coalition Against Domestic Violence, the Washington Association of Domestic Violence Perpetrator Intervention Professionals, and associations of superior court judges, district and municipal court judges, misdemeanor probation, prosecuting attorneys, and defense attorneys.

Address Confidentiality Program for Domestic Violence Victims: Upon request of a participant in the address confidentiality program, the Department of Health may not make a birth certificate or death certificate available for inspection and copying except: (1) to a law enforcement agency upon request; (2) by court order to the person identified in the order; or (3) for legitimate research proposals.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause, and Sections 8 and 9 take effect immediately. The remainder of the sections take effect 90 days after adjournment of session in which bill is passed.

Office of Program Research