

# HOUSE BILL REPORT

## HB 1394

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### As Passed Legislature

**Title:** An act relating to the duress defense.

**Brief Description:** Making the defense of duress unavailable for the crime of homicide by abuse.

**Sponsors:** Representatives Hurst, Constantine, Lambert, Sheahan, McDonald, Lovick, H. Sommers, Dickerson, Kenney and Esser.

### Brief History:

#### Committee Activity:

Judiciary: 2/2/99, 2/16/99 [DP].

#### Floor Activity:

Passed House: 3/8/99, 97-0.

Passed Senate: 4/7/99, 47-0.

Passed Legislature.

### Brief Summary of Bill

- Makes the defense of duress unavailable to a person being prosecuted for homicide by abuse.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass. Signed by 12 members: Representatives Carrell, Republican Co-Chair; Constantine, Democratic Co-Chair; Hurst, Democratic Vice Chair; Lambert, Republican Vice Chair; Cox; Dickerson; Esser; Kastama; Lantz; Lovick; McDonald and Schindler.

**Staff:** Jim Morishima (786-7191).

### Background:

A person is guilty of homicide by abuse if, under circumstances manifesting an extreme indifference to human life, the person causes the death of a child or person

under the age of 16, a developmentally disabled person, or a dependent adult and the person has previously engaged in a pattern of assault or torture of the victim. Homicide by abuse is a class A felony.

Even when all of the elements of a crime have been established against a defendant, the defendant may raise certain defenses that pardon his or her conduct. One example of such a defense is the defense of duress.

Under the defense of duress, a defendant's criminal act is excused if the defendant participated in the crime under the compulsion of another person. The other person must have created a reasonable apprehension in the mind of the defendant that in case of refusal, the defendant or another would be subject to immediate death or immediate grievous bodily injury. The defense is not established solely by a showing that the defendant acted at the command of his or her spouse. The defendant has the burden of proving the elements of duress by a preponderance of the evidence.

The defense of duress is not available in prosecutions for murder or manslaughter. The defense of duress is also not available if the defendant intentionally or recklessly placed himself or herself in a situation in which duress was likely.

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**Summary of Bill:**

The defense of duress is not available in prosecutions for homicide by abuse.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** A recent court ruling has indicated that the defense of duress is available in prosecutions for homicide by abuse. The defense of duress is unavailable for manslaughter in the second degree, which is a lesser crime than homicide by abuse. The defense of duress should be unavailable in prosecutions for homicide by abuse for the same reasons that it is unavailable for prosecutions for murder and manslaughter.

**Testimony Against:** None.

**Testified:** Representative Hurst, prime sponsor; and John Neeb, Washington Association of Prosecuting Attorneys.