

SENATE BILL REPORT

SB 5408

As of March 5, 1997

Title: An act relating to domestic violence.

Brief Description: Increasing penalties for domestic violence.

Sponsors: Senators Kohl, Sheldon, McAuliffe, Franklin, Patterson, Wojahn, Fairley, Kline, Winsley and Spanel; by request of Governor Lowry.

Brief History:

Committee Activity: Law & Justice: 3/5/97.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Lidia Mori (786-7755)

Background: Domestic violence laws provide civil and criminal remedies to victims of domestic violence. In the criminal context, 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 for a restraining order if a domestic relations action has been started.

The judiciary has inherent power to compel witnesses to appear and testify in judicial proceedings. Common law and statutory law recognize exceptions to compelled testimony in some circumstances, including privileged communications.— Washington law establishes a number of privileges including communications between husband and wife, attorney and client, clergy and confessor, physician and patient, and psychologist and client.

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 established solely by a showing that a married person acted on the command of his or her spouse.

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.

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. If the 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 to a law enforcement agency, by court order, or if certification has been canceled.

Summary of Bill: A domestic violence counselor or advocate may not be examined as to a communication made by the victim of domestic violence to the counselor or advocate. This testimonial privilege may be waived by the domestic violence victim.

When a defendant alleges the defense of duress, the court considers 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. 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.

The second or subsequent conviction of assault in the fourth degree against the same victim is a class C felony and is a level III on the felony seriousness table.

A police officer must arrest a person without a warrant when the officer has probable cause to believe the person is 16 years or older and within the preceding 24 hours has feloniously assaulted a family member, an assault has occurred which has resulted in a bodily injury or has caused another person reasonably to fear imminent serious bodily injury or death. An officer is immune from civil liability arising out of the good faith performance of his or her duties in making such an arrest.

The sentence of a domestic violence offender may include up to two years of community supervision and may also include batterer treatment in a state-certified program. The court is directed to consider the existence of any no-contact, restraining, protection, or anti-harassment order when setting the length and conditions of supervision.

The Sentencing Guidelines Commission (SGC) is required to study and establish nonbinding guidelines for the imposition of court-ordered 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, district and municipal court judges, misdemeanor probation, prosecuting and defense attorneys.

Upon request of a participant in the address confidentiality program, the Department of Health may not make a birth 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.

Appropriation: None.

Fiscal Note: Requested on March 4, 1997.

Effective Date: Ninety days after adjournment of session in which bill is passed; sections 8 and 9 take effect immediately.