

SENATE BILL REPORT

HB 1394

As Reported By Senate Committee On:
Judiciary, March 31, 1999

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

Committee Activity: Judiciary: 3/29/99, 3/31/99 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Heavey, Chair; Kline, Vice Chair; Costa, Goings, Hargrove, Haugen, Johnson, Long, McCaslin, Roach and Zarelli.

Staff: Dick Armstrong (786-7460)

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 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 excuse 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.

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

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: Murder and manslaughter do not allow the defense of duress. The defense of duress should not apply to homicide by abuse. Homicide by abuse is a more serious crime than manslaughter. The bill corrects a technical oversight that should be corrected by the Legislature on a proactive basis before an actual case occurs.

Testimony Against: None.

Testified: PRO: Representative Hurst, prime sponsor; Tom McBride, WAPA.