



GEORGES PRAT LAW

Criminal Defence BC

Georges Prat Law
Criminal Defence BC

604.445.2543

604.608.9164

The Marine Building
1000 - 355 Burrard St.
Vancouver, BC V6C 2G8
gp@criminaldefencebc.com
www.criminaldefencebc.com

What is a domestic assault?

A domestic assault is an assault that occurs in a domestic context. It's usually an assault committed by one person against their romantic partner, but includes any assault against someone living in the same household.

There is no difference between the legal definition of an [assault](#) and a domestic assault. The elements (i.e. ingredients) of the two are the same. A domestic assault is not a different criminal charge than assault. However, in practice the two are very different.

Domestic assaults are much more common than other assaults. The reason is that people spend by far more time with their domestic partners. If two people spend a lot of time together, it's simply much more likely that they'll get into conflict at some point.

Certain prosecutors only handle domestic violence files. Domestic violence court file numbers end with a "K". Lawyers therefore call domestic violence charges "K-files". In the provincial court in Surrey, there is a courtroom dedicated solely to K-files.

How does the domestic nature of an assault make it different from other assaults?

The justice system takes domestic assaults very seriously. Police are more likely to recommend charges for domestic assaults than regular assaults, and prosecutors are more likely to approve a charge for domestic assaults than regular assaults.

Domestic assault charges generally cause a drastic change in the accused's life. Often, the accused and complainant (i.e. alleged victim) were living together. Once the complainant alleges the accused assaulted them, the accused's release conditions forbid them from having any further contact with the complainant.

In other words, once someone is accused of domestic violence they might be forced out of their own home. The accused's [bail](#) conditions usually only allow them to return for one hour to gather whatever belongings they can get.

Because the accused and complainant were in an intimate relationship, it's common for the complainant to contact the accused. It's also common for the accused to contact the complainant. Needless to say, that can lead to one or more [breach charges](#), which then increases the jeopardy the accused faces.

What are the police's policies regarding domestic violence?

According to the Vancouver Police Department's policies, police should recommend charges for domestic assault allegations when there's "sufficient evidence". Sufficient evidence can exist even if:

- (1) There's no evidence of an injury;
- (2) The complainant doesn't want the police to recommend charges;
- (3) The complainant was drunk during the incident; and
- (4) The complainant is the only witness to the incident.

Essentially, the police will recommend charges on the complainant's word alone. The VPD's policies also instruct them to decide who's the primary aggressor. They almost never recommend charges against both people in the relationship.

In deciding who's the primary aggressor, the VPD takes into account who is bigger and stronger. That means that, all else being equal, in a typical relationship the police will only recommend charges against the man.

What are the prosecutor's policies regarding domestic violence?

The BC Crown Counsel Policy Manual guides prosecutors' decision-making in BC. The following are some of the guidelines for domestic violence allegations:

- (1) Even if a complainant doesn't want their partner charged, prosecutors should still consider charging them;
- (2) If the accused breaches their bail conditions, the prosecutor should charge them for it; and
- (3) If the accused tries to persuade the complainant not to cooperate with the prosecution, the prosecutor should charge the accused with obstructing justice.

If the accused and complainant have young children, the Ministry of Children and Family Development (MCFD) will pursue their own independent investigation. MCFD's mandate is to find out if the children's safety is at risk.

What are some defences to domestic assault?

Since domestic assaults are not legally defined any differently from other assaults, the same defences that apply to [assaults](#) apply to domestic assaults. However, in practice some of these defences are less likely to succeed.

Self-defence is more difficult to argue when a man says they were defending themselves from a woman who is shorter and lighter than them. The law also says that a consensual fight isn't a viable defence to domestic assault charges if there was any *potential* the complainant could've suffered bodily harm. For a regular assault, the consensual fight defence fails only if the complainant suffered actual bodily harm.

You can find the firm's case results for domestic assault [HERE](#).