

HOUSE BILL REPORT

HB 1425

As Amended by Senate

Title: An act relating to privileged communications.

Brief Description: Protecting privileged communication.

Sponsors: Representatives Scott, Padden, Appelwick, Costa, Sheldon, Dickerson, Chappell, Hatfield, Brown and Basich.

Brief History:

Committee Activity:

Law & Justice: 2/22/95, 2/28/95 [DP].

Floor Activity:

Passed House: 3/8/95, 98-0.

Senate Amended.

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass. Signed by 17 members: Representatives Padden, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Appelwick, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Campbell; Carrell; Chappell; Cody; Lambert; McMahan; Morris; Robertson; Sheahan; Smith; Thibaudeau and Veloria.

Staff: Edie Adams (786-7180).

Background: 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 must be one which in the opinion of the community ought to 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, with some exceptions; (2) attorney and client; (3) clergy and confessor; (4) physician and patient with some exceptions; and (5) public officers and witnesses, if the public interest would suffer by disclosure.

Summary of Bill: A new privileged communication is created.

A law enforcement officer who is a designated peer support group counselor shall not be compelled to testify in any judicial proceeding about any communication made to the counselor by a law enforcement officer while receiving counseling, unless the law enforcement officer consents. This privilege applies only to communications made to a counselor acting in his or her capacity as a peer group counselor. The privilege does not apply if the counselor witnessed or was a party to any incident which prompted the delivery of peer support group counseling services to the law enforcement officer.

The role of the peer group counselor is to provide emotional and moral support and counseling to an officer who needs these services as a result of an incident in which the officer was involved while acting in his or her official capacity.

EFFECT OF SENATE AMENDMENT(S):

The peer support counselor must be designated as such by the sheriff, police chief, or chief of the State Patrol prior to the incident that results in counseling. The privilege does not apply if the counselor was an initial responding officer to the incident which prompted the delivery of counseling services to the law enforcement officer. "Peer support group counselor" is defined as a law enforcement officer or employee who has been trained to provide emotional and moral support and counseling or a non-employee counselor designated to provide emotional and moral support and counseling.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: Officers are often involved in situations involving a great deal of stress, and they need to be able to discuss these situations openly with peer counselors without the fear that these communications will be used in judicial proceedings. This bill protects the same types of communications currently protected by the psychologist-patient privilege.

Testimony Against: None.

Testified: Thor Giancesini, Washington State Council of Police Officers (pro); and Rick Jensen, Washington State Patrol Troopers Association (pro).

Votes on Final Passage:

Yeas 98