

HOUSE BILL REPORT

HB 2971

As Reported By House Committee On:

Law & Justice

Title: An act relating to privileged communications.

Brief Description: Specifying conditions for privileged communications between counselors and emergency service providers.

Sponsors: Representative Delvin.

Brief History:

Committee Activity:

Law & Justice: 2/4/98, 2/6/98 [DP].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass. Signed by 11 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Cody; Kenney; Lantz; Mulliken; Robertson and Sherstad.

Minority Report: Do not pass. Signed by 2 members: Representatives Carrell and Lambert.

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 "testimonial privileges." 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 is one that should 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; (2) attorney and client; (3) clergy and confessor; (4) physician and patient; (5) psychologist and client; (6) optometrist and client; and (7) law enforcement peer support counselor and a law enforcement officer; and (8) sexual assault advocate and victim.

The law enforcement peer support counselor privilege prevents a designated peer support group counselor from being compelled to testify in any judicial proceeding about any communication made to the counselor by a law enforcement officer while receiving counseling, without that law enforcement officer's consent to disclosure. 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 was an initial responding officer, a witness, or a party to the incident which prompted the delivery of peer support group counseling services to the law enforcement officer.

The peer support group counselor is a person who has received training 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.

Summary of Bill: The privilege for a law enforcement peer support counselor and a law enforcement officer is amended to apply to a peer support counselor and an emergency service provider. "Emergency service provider" means a law enforcement officer, fire fighter, emergency medical technician, emergency worker and personnel of an ambulance or aid vehicle service.

Information otherwise available from the original source is not immune from discovery or use in a trial merely because the information was presented during a counseling session if the information sought is otherwise permissible and discoverable.

Any communication or information acquired by any emergency service provider involved in a peer support counseling session is confidential and shall not be disclosed by any party to the counseling session, except to the extent necessary to provide assistance pursuant to the counseling session.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This bill extends the law enforcement officer privilege to more of the professionals who respond to emergency incidents that involve chaos, tragedy, and trauma. These situations impose tremendous amounts of stress that impact performance.

It is vital that professionals who respond to emergencies receive support through confidential peer support counseling to enable them to carry out their vital duties in the best possible way.

Testimony Against: None.

Testified: Representative Delvin, prime sponsor; Therese Cobb, citizen (pro); Michael Cobb, Richland Police Department (pro); and Daniel Clark, Washington State Patrol (pro).