

SENATE BILL REPORT

SHB 2685

As Reported By Senate Committee On:
Law & Justice, February 26, 1998

Title: An act relating to communications between victims of domestic violence and victims' advocates.

Brief Description: Creating a privilege for communications between victims of domestic violence and victims' advocates.

Sponsors: House Committee on Law & Justice (originally sponsored by Representatives Sheahan, Costa, Lambert, O'Brien, Ballasiotes, Conway, B. Thomas and Romero).

Brief History:

Committee Activity: Law & Justice: 2/24/98, 2/26/98 [DPA].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Roach, Chair; Johnson, Vice Chair; Fairley, Hargrove, Kline, Long, Stevens, Thibaudeau and Zarelli.

Staff: Lidia Mori (786-7755)

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 in a civil action; (5) psychologist and client; (6) optometrist and client; (7) law enforcement peer support counselor and a law enforcement officer; and (8) sexual assault advocate and victim.

Summary of Amended Bill: A testimonial privilege is created for communications made by a victim to a domestic violence victim advocate. A domestic violence victim advocate may not be examined about any communication made by the victim to the advocate, unless the victim consents.

A domestic violence victim advocate may disclose a confidential communication without the consent of the victim if failure to disclose would likely result in a clear and imminent risk of serious physical injury or death of the victim or another person. An advocate is immune from liability from disclosing information if the advocate acted in good faith. The good faith of the advocate is presumed in any civil or criminal action arising out of the disclosure.

"Domestic violence victim advocate" is defined as the employee or volunteer from a domestic violence victims' services program or shelter, association, or human services agency that provides information, medical or legal advocacy, counseling, or support to victims of domestic violence.

Amended Bill Compared to Substitute Bill: A domestic violence victim advocate is an employee or volunteer from a domestic violence victims' services program or shelter, association or human services agency, as opposed to an employee or volunteer from a domestic violence victims' services program shelter or association or human services agency.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: Victim advocates play a crucial role in the healing of domestic violence victims. It is important that the victim know that what is communicated is confidential.

Testimony Against: None.

Testified: Representative Costa, original sponsor.