

HOUSE BILL REPORT

HB 1783

As Reported by House Committee On:
Judiciary

Title: An act relating to privileged communications by fire fighters and law enforcement officers.

Brief Description: Making communications between fire fighters and trained peer supporters privileged.

Sponsors: Representatives Carrell, Lantz, Hurst, Lovick, Marine and Woods.

Brief History:

Committee Activity:

Judiciary: 2/16/01, 2/22/01 [DPA].

Brief Summary of Amended Bill

- A new privileged communication is created between a trained peer supporter and a fire fighter.
- The definition of a trained peer supporter is expanded to include other mental health services providers.
- A task force is created to study this privilege for communications between peer supporters and fire fighters.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 7 members: Representatives Carrell, Republican Co-Chair; Lantz, Democratic Co-Chair; Hurst, Democratic Vice Chair; Dickerson, Esser, Lovick and McDermott.

Minority Report: Do not pass. Signed by 3 members: Representatives Lambert, Republican Vice Chair; Boldt and Casada.

Staff: Katy Freeman (786-7386).

Background:

The judiciary has the 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 types of relationships, or certain types of confidential communications within relationships, are deemed so important to society that they must be protected.

A confidential communication is a statement made under circumstances showing that the speaker intends the statement to be heard only by the person addressed. A privilege is basically a personal right to preserve the confidentiality of certain private communications.

Under common law, four conditions must be met to find a privilege:

- the communications must originate in confidence;
- the element of confidentiality must be essential to the relationship;
- the relationship is one that should be fostered; and
- the injury of disclosing the communication must be greater than the benefit of disclosure.

Washington's statutes create a number of privileges, including communications between the following persons:

- husband and wife;
- attorney and client;
- clergy and confessor;
- physician and patient;
- psychologist and client;
- optometrist and client; and
- law enforcement peer support group counselor and a law enforcement officer in certain circumstances.

A peer support group counselor– may be a law enforcement officer or a civilian employee of a law enforcement agency who has been designated as such by the sheriff, police chief, or chief of the Washington State Patrol prior to the incident that results in counseling. A peer support group counselor may also be a nonemployee counselor. A peer support group counselor has received training to provide emotional and moral support as well as counseling to an officer who needs those services as a result of an incident in which the officer was involved while acting in his or her official capacity.

The law enforcement peer support group counselor privilege prevents a designated peer support group counselor from disclosing in any judicial proceeding any communication made to the counselor by a law enforcement officer while receiving counseling, unless the officer consents to disclosure.

The privilege only applies when the communication is made to the counselor while acting in his or her capacity as a peer support group counselor. The privilege does not apply if the counselor was an initial responding officer, a witness, or a party to the incident.

Summary of Amended Bill:

The term peer support group counselor– used in the privilege statute is changed to trained peer supporter.–

The definition of a trained peer supporter is expanded to include designated fire fighters and civilian employees of a fire department.

The definition of a trained peer supporter is also expanded to include other mental health services providers. These providers may provide emotional and moral support as well as counseling to an officer or fire fighter who needs those services as a result of an incident in which the officer or fire fighter was involved while acting in his or her official capacity.

A privilege is created for communications made between a designated trained peer supporter and a fire fighter in certain circumstances. Therefore, a trained peer supporter cannot, without the consent of the fire fighter making the communication, testify about any communication made to the trained peer supporter by the fire fighter while receiving peer support services.

The privilege applies only to communications made to a trained peer supporter acting in his or her capacity as a trained peer supporter. The privilege does not apply if the trained peer supporter was an initial responding officer, a witness, or a party to the incident which prompted the delivery of peer support services to the fire fighter.

Additionally, a task force is established to study and make recommendations concerning the privilege between a law enforcement officer or a fire fighter and a trained peer supporter. The task force shall make recommendations to appropriate committees of the Legislature by November 30, 2003. The eight-member task force must consist of two members of the House of Representatives from each political caucus and two members of the Senate from each political caucus.

Amended Bill Compared to Original Bill:

The amended bill creates the task force and study requirement. The original bill would remove a requirement that peer supporters receive training for counseling.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: This bill will equalize the way peer support personnel are treated by extending the privilege to fire fighters. Law enforcement officers and fire fighters have a tendency to take care of their own. When dealing with difficult situations, it is critical to have the counseling provided by personnel in their own field. The officers and fire fighters trust these counselors because they feel that they have the ability to directly relate to the situation. Fire fighters have created their own Critical Incident Stress Debriefing Teams (CISD). One of the critical portions of the CISD concept that makes it work is the ability for the persons participating in it to know that what they are saying in these sessions is confidential. This allows the fire fighters to open up and express their feelings without concern or fear that what they are saying will come back to them later.

Testimony Against: None.

(In support with amendment) It makes sense to grant this privilege to persons who put their lives on the line for the safety of the community. However, this bill would work better if it stayed with the definition of a "peer support group counselor" in existing law rather than moving to the definition of a "trained peer supporter." In existing law, a peer counselor is trained to provide emotional and moral support as well as counseling. The trained counseling element is important in terms of who is granted the privilege.

Testified: (In support) Representative Carrell, prime sponsor; and Cody Arledge, Washington State Council of Fire Fighters.

(In support with amendment) Larry Shannon, Washington State Trial Lawyers Association.