
Judiciary Committee

HB 2122

Title: An act relating to protecting confidentiality of domestic violence information.

Brief Description: Protecting confidentiality of domestic violence information.

Sponsors: Representatives Ericks, Santos, Hankins, Morrell, Lantz, Blake, Darneille, Ormsby, Wood, Chase, Linville, Kenney, Tom, McDermott and Hasegawa.

Brief Summary of Bill

- Creates a privilege for communications made by a domestic violence victim to an advocate;
- Prohibits a domestic violence program or its employees, volunteers, or agents from disclosing information about a recipient of domestic violence services without the recipient's consent;
- Limits the information the Department of Social and Health Services may provide regarding whether a person is receiving public assistance if the information is likely to impair a person's safety.

Hearing Date: 2/28/05

Staff: Trudes Tango Hutcheson (786-7384).

Background:

Privileged Communications

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; (7) law enforcement peer support counselor and a law enforcement officer; and (8) sexual assault advocate and victim.

Domestic Violence Programs and Public Assistance

The Department of Social and Health Services (DSHS) administers state and federal funds for domestic violence programs. "Domestic violence program" is defined as an agency that provides shelter, advocacy, and counseling. The DSHS establishes minimum standards for shelters receiving grants. The shelters must provide certain services, including client advocacy and counseling. Client records maintained by a domestic violence program are not subject to discovery in any judicial proceeding unless certain conditions are met.

The DSHS also administers and disburses state and federal public assistance funds. The DSHS may not disclose the contents of any records, files, or other communications, unless the disclosure is directly connected with the administration of the programs. However, an individual may inquire to the DSHS whether a named person is receiving public assistance, and the DSHS must provide the individual with a "yes" or "no" answer.

Summary of Bill:

Privileged Communications

A privilege for communications made by domestic violence victims, similar to the privilege for sexual assault victims, is created. A domestic violence advocate may not be examined about any communication made by a victim to the advocate without the victim's consent.

A domestic violence advocate means an employee or volunteer of a domestic violence shelter, victim assistance unit, program, or association that provides information, advocacy, counseling, or support to victims, and who has been designated by the victim to accompany the victim to police and prosecution interviews, court proceedings, or to a health care facility.

A domestic violence advocate may disclose communications without the victim's consent if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death to a person. An advocate is immune from liability for a good faith disclosure. There is a presumption that an advocate acted in good faith.

Domestic Violence Programs and Public Assistance

The definition of "domestic violence program" is amended to include non-shelter based domestic violence programs. The standards established by the DSHS for domestic violence programs must enhance victim safety through client confidentiality and other means.

A domestic violence program, individual assisting the program, or an agent, employee, or volunteer of a program may not disclose information about a recipient of services without the informed authorization of the recipient. The recipient's authorization must be signed, in writing, and limited to a reasonable time. If no expiration date is specified, then the authorization will expire 90 days after the date it is signed.

The domestic violence program, if requested, must provide a copy of the disclosed information to the recipient. If disclosure is required by statute or the court, the program must make reasonable attempts to notify the recipient. If personally identifying information will be disclosed, the

domestic violence program must take steps necessary to protect the privacy and safety of the persons affected by the disclosure.

The DSHS may answer individual inquiries regarding whether a particular person is receiving public assistance unless the answer is likely to impair the safety of past or current victims of domestic violence or stalking. The DSHS must adopt rules to establish procedures to protect confidential information when shared between state agencies and other partners.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.