

# FINAL BILL REPORT

## ESHB 2848

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Synopsis as Enacted

**Brief Description:** Protecting confidentiality of domestic violence information.

**Sponsors:** By House Committee on Judiciary (originally sponsored by Representatives Lantz, Ericks, Santos, Williams, Rodne, Priest, Hudgins, Darneille, Morrell, Kessler, McDonald, Roberts, McCoy, Kenney, Campbell, P. Sullivan, Wallace, Hasegawa, Kilmer, Green, Simpson, Wood, Ormsby and Springer).

**House Committee on Judiciary**  
**Senate Committee on Judiciary**

### **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.

Washington statutory law establishes a number of privileges, including communications made by a sexual assault victim to a sexual assault victim advocate. The advocate may disclose information without the consent of the victim to prevent a clear, imminent risk of serious physical injury or death. The advocate is immune from civil or criminal action that arises from a good faith disclosure. In an action arising from a disclosure, the advocate's good faith is presumed.

#### DSHS and Domestic Violence Information

The Department of Social and Health Services (DSHS) administers state and federal funds for domestic violence programs, which include shelters. The DSHS establishes minimum standards for shelters receiving funds. 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 public assistance programs.

### **Summary:**

#### Privileged Communications

A new privilege is created. Communications made between a domestic violence victim and domestic violence advocate are privileged and may not be disclosed without the consent of the victim. A "domestic violence advocate" is an employee or supervised volunteer from a community-based domestic violence program or human services program that provides information, advocacy, counseling, crisis intervention, emergency shelter, or support to victims of domestic violence and who is not employed by or under the direct supervision of law enforcement, a prosecutor's office, or child protective services of the DSHS.

An advocate may disclose confidential communications without the victim's consent if failure to do so is likely to result in a clear, imminent risk of serious physical injury or death. The privilege does not relieve a domestic violence advocate from the mandatory reporting requirements for child abuse. Domestic violence advocates are immune from liability for good faith disclosure. In an action arising out of disclosure, the advocate's good faith is presumed.

#### DSHS and Domestic Violence Information

Unless required by court order, a domestic violence program and those assisting in delivering services, or any agent, employee, or volunteer of a domestic violence program, must not disclose information about a recipient of domestic violence services without the recipient's, signed authorization.

The recipient's authorization must have a reasonable time limit on the duration. If the authorization does not have a specific expiration date, the authorization expires 90 days after the date it was signed. An authorization is not a waiver of the recipient's rights or privileges under other statutes, rules of evidence, or common law.

If disclosure is required by statute or court order, the domestic violence program must make reasonable attempts to notify the recipient of the disclosure. If personally identifying information is to be disclosed, the domestic violence program must take steps necessary to protect the privacy and safety of the persons affected by the disclosure.

For nonshelter community-based programs receiving DSHS funding, the DSHS must establish minimum standards to enhance safety and security by means such as, but not limited to, client advocacy, client confidentiality, and counseling.

The DSHS must review methods to improve and protect the confidentiality of information about recipients of public assistance who have disclosed to the department that they are victims of domestic violence or stalking.

#### **Votes on Final Passage:**

House	98	0
Senate	47	0

**Effective:** June 7, 2006