

HOUSE BILL REPORT

HB 2611

As Reported by House Committee On:
Judiciary

Title: An act relating to the privilege for peer support group counselors.

Brief Description: Concerning the privilege for peer support group counselors.

Sponsors: Representatives Barkis, Walsh, Irwin, Klippert, Hayes, Maycumber, Lovick, Stambaugh, Griffey, Wilcox, Steele and Young.

Brief History:

Committee Activity:

Judiciary: 1/30/18, 2/1/18 [DP].

Brief Summary of Bill

- Establishes a testimonial privilege for certain communications made by a limited authority law enforcement officer to a peer support group counselor while receiving counseling.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 11 members: Representatives Jinkins, Chair; Graves, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Klippert, Muri, Orwall, Shea and Valdez.

Staff: Edie Adams (786-7180).

Background:

Testimonial Privileges.

The judiciary has inherent power to compel witnesses to appear and testify in judicial proceedings so that the court will receive all relevant evidence. 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 should be protected.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Washington statutory law establishes a number of testimonial 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) sexual assault advocate and victim; and (8) peer support group counselor and law enforcement officer or firefighter.

Peer Support Group Counselor Privilege.

The peer support group counselor privilege protects communications made by a law enforcement officer or firefighter to a designated peer support group counselor while receiving counseling for an incident in which the officer or firefighter was involved while acting in the officer's official capacity. The peer support group counselor may not be compelled to testify in a judicial proceeding about the communication unless the law enforcement officer or firefighter consents to disclosure. This privilege applies only to communications made to a counselor 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 or firefighter, a witness, or a party to the incident that prompted the counseling services.

A peer support group counselor is a person who has received training to provide emotional and moral support and counseling to an officer or firefighter who needs these services as a result of an incident in which the officer or firefighter was involved while acting in his or her official capacity. The counselor must be designated as such by the agency employing the officer or firefighter prior to the incident that results in counseling.

General and Limited Authority Peace Officers.

A general authority Washington peace officer is any full-time, fully compensated and elected, appointed, or employed officer of a general authority law enforcement agency who is commissioned to enforce the criminal laws generally. A general authority Washington law enforcement agency is one that has as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general. In addition to local sheriffs' offices and police departments, the Washington State Patrol and the Department of Fish and Wildlife are general authority Washington law enforcement agencies.

A limited authority Washington peace officer is any full-time, fully compensated officer of a limited authority law enforcement agency that has, as one of its functions, the enforcement of traffic or specific criminal laws relating to limited subject areas or within specific geographic boundaries. Limited authority law enforcement agencies include the Department of Natural Resources, Department of Social and Health Services, Department of Corrections, Gambling Commission, Lottery Commission, Parks and Recreation Commission, Utilities and Transportation Commission, Liquor and Cannabis Board, and Office of the Insurance Commissioner.

Summary of Bill:

A testimonial privilege is established for communications made by a limited authority law enforcement officer to a designated peer support group counselor while receiving counseling

as the result of an incident in which the officer was involved while acting in the officer's official capacity. The privilege applies under the same standards and conditions that apply to the privilege for communications by a law enforcement officer or firefighter to a peer support group counselor.

"Limited authority law enforcement officer" means a limited authority Washington peace officer employed by the Department of Corrections, State Parks and Recreation Commission, Department of Natural Resources, Liquor and Cannabis Board, or Washington State Gambling Commission. "Law enforcement officer" is defined to mean a general authority Washington peace officer.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) The departments of Corrections and Natural Resources, the State Parks and Recreation Commission, the Liquor and Cannabis Board, and the Gambling Commission all employ limited authority law enforcement officers who are tasked with enforcement of limited criminal laws or in limited geographical areas. These officers can be put in perilous situations that result in a need to consult with a counselor. They too often have to deal with traumatic experiences that people may think only apply to law enforcement officers or first responders. All officers who enforce the criminal laws and that are involved in use of force incidents should receive protection for their communications with counselors.

Community corrections officers' responsibilities include serving arrest warrants and they often find themselves in dangerous situations and critical incidents where lethal force is necessary in order to defend themselves. They need to be able to talk with counselors to help them cope with these incidents. The Department of Corrections has designated critical incident stress management teams that can be deployed to assist staff who have been involved in traumatic incidents, but they are not covered by current privilege laws.

The bill is important to allow officers to engage with peer support counselors during a crisis without fear of being subpoenaed to testify about those communications. Limited authority law enforcement officers can endure situations that can have lasting effects on their physical and mental well-being. Peer support is a vital component in maintaining health and wellness in any law enforcement agency. The bill will help agencies create an environment that focuses on prevention and intervention to support their officers.

(Opposed) None.

Persons Testifying: Representative Barkis, prime sponsor; Jon Tullock; Ton Johnson, Washington Federation of State Employees; and Mac Pevey, Washington Department of Corrections.

Persons Signed In To Testify But Not Testifying: None.