
Higher Education Committee

SSB 5764

Brief Description: Concerning higher education records.

Sponsors: Senate Committee on Higher Education (originally sponsored by Senators Wellman, Hasegawa and Rolfes).

Brief Summary of Substitute Bill

- Provides that survivor communications with, and records maintained by, campus-affiliated advocates are confidential and exempt from the Public Records Act, except under certain circumstances.

Hearing Date: 3/14/17

Staff: Trudes Tango (786-7384).

Background:

Confidential and Privileged Communications.

Certain communications, such as communications between a therapist and patient, are considered confidential and privileged. By statute, communications between a sexual assault advocate or a domestic violence advocate and a victim may not be disclosed without consent of the victim. A "sexual assault advocate" is an employee or volunteer from a community sexual assault program or victim assistance unit or association, that provides information, medical or legal advocacy, counseling, or support to victims of sexual assault and who is designated by the victim to accompany the victim to the hospital or legal proceedings regarding the assault. A "domestic violence advocate" is an employee or volunteer from a community-based domestic violence program or human services program that provides information, advocacy, counseling, crisis intervention, emergency shelter, or support to domestic violence victims and who is not employed by a law enforcement agency, prosecutor's office, or Child Protective Services.

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.

Advocates may disclose confidential 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 of the victim or another person.

Public Records Act.

All agencies, including the institutions of higher education, must make all records available for public inspection or copying, unless the records fall within a specific exemption to the Public Records Act (PRA). Crime victim information and victim communications with crime victim advocates are provided exemptions from the PRA. The PRA does not contain specific exemptions for victim communications to advocates who are employed by or volunteer for an institution of higher education.

Campus Sexual Violence Prevention Task Force.

In 2015, the Legislature established the Campus Sexual Violence Task Force (Task Force) to, among other things, develop best practices to promote campus sexual violence awareness, reduce the occurrence of campus sexual violence, and develop recommendations for improving institutional policies and procedures. The Task Force reviewed the statutory privilege granted to victim advocates and the exemptions for crime victims under the PRA. In its final 2016 report to the Legislature, the Task Force stated that existing law is unclear whether those provisions extend to students, staff, and faculty who receive services from advocates employed by institutions of higher education or work as volunteers on campus, and are not affiliated with a community-based advocacy organization. The Task Force report included a recommendation for legislation to make survivors' communications with, and records maintained by, campus-affiliated advocates confidential and exempt from the PRA

Summary of Bill:

Survivor communications with, and records maintained by, campus-affiliated advocates are confidential. Records maintained by a campus-affiliated advocate are not subject to inspection and copying by an institution of higher education or by the public under the PRA unless:

- the survivor consents to inspection or copying;
- there is a clear, imminent risk of serious physical injury or death of the survivor or another person;
- inspection or copying is required by federal law; or
- a court mandates that the record be available for inspection or copying.

Campus-affiliated advocate means a sexual assault advocate or domestic violence advocate as defined under the privilege statute, or a victim advocate, employed by or volunteering for an institution of higher education. Survivor means a student, faculty, staff, or administrator at an institution of higher education who believes they are a victim of sexual assault, dating or domestic violence, or stalking.

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.