

HOUSE BILL REPORT

SSB 5764

As Reported by House Committee On:
Higher Education

Title: An act relating to higher education records.

Brief Description: Concerning higher education records.

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

Brief History:

Committee Activity:

Higher Education: 3/14/17, 3/22/17 [DP].

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.

HOUSE COMMITTEE ON HIGHER EDUCATION

Majority Report: Do pass. Signed by 9 members: Representatives Hansen, Chair; Pollet, Vice Chair; Holy, Ranking Minority Member; Van Werven, Assistant Ranking Minority Member; Haler, Orwall, Sells, Stambaugh and Tarleton.

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. There is a statutory privilege for communications between a sexual assault advocate or a domestic violence advocate and a victim. Generally, these communications may not be disclosed without the victim's consent. 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,

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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.

Advocates 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 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: Available.

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) This is the first bill from the Campus Sexual Violence Task Force. The lack of confidentiality can be critical in a survivor's process. Communications from victims to an advocate should be confidential whether or not the advocate is from the community or the college. Campus advocates work in fear of public records requests and do not keep detailed notes due to the risk of disclosure. Confidentiality will increase the frequency of students accessing advocacy. Campus advocacy does not fit squarely within the confidentiality requirements for community-based advocates. The federal privacy requirements are imperfect and were designed to protect a student's educational records. It is unclear where the boundary is between student records protected by the federal law and survivor communications.

(Opposed) None.

Persons Testifying: Senator Wellman, prime sponsor; Ky O'Dell, The Evergreen State College; Alex Wirth, Associated Students of the University of Washington; Nora Selander, Associated Students of Western Washington University; and Michael Scott, Associated Students of Central Washington University.

Persons Signed In To Testify But Not Testifying: None.