

SENATE BILL REPORT

HB 2611

As Passed Senate, February 28, 2018

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: Passed House: 2/13/18, 98-0.

Committee Activity: Law & Justice: 2/19/18, 2/22/18 [DP].

Floor Activity:

Passed Senate: 2/28/18, 49-0.

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.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Angel, Assistant Ranking Member; Darneille, Frockt and Wilson.

Staff: Shani Bauer (786-7468)

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.

Washington statutory law establishes a number of testimonial privileges, including communications between the following persons: (1) husband and wife, (2) attorney and

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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.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: There are officers in addition to general authority law enforcement and firefighters that are in need of this privilege. DOC officers often face critical incidents in their job while they are protecting the public and sometimes must use lethal force. A DOC officer can talk to a peer counselor but they are often hesitant to do this because they are aware the communication is not confidential and may jeopardize an investigation or prosecution. DOC has psychologists or counselors available for staff, but these are often not immediately available. This is detrimental to the well-being of the officer when they cannot share in the immediate aftermath of an incident. These provisions already exist in law for other law enforcement agencies. The Liquor and Cannabis Board has been working to develop a peer support network for its employees. The agency has recently added its first chaplain and two designated peer support persons. Even though currently this communication is not protected, peer support is a critical part of the program. Allowing these communications to be confidential would be an added benefit for staff.

Persons Testifying: PRO: Representative Andrew Barkis, Prime Sponsor; John Tulloch, Community Corrections Specialist, Washington Federation of State Employees; Ton Johnson, Labor Advocate, Washington Federation of State Employees; Mac Pevey, Assistant Secretary, Washington Department of Corrections; Justin Nordhorn, Washington State Liquor and Cannabis Board.

Persons Signed In To Testify But Not Testifying: No one.