

HOUSE BILL REPORT

SSB 6188

As Passed House:

February 28, 1996

Title: An act relating to communications between victims of sexual assaults and their personal representatives.

Brief Description: Establishing a conditional privilege for communications between victims of sexual assaults and their personal representatives.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Sheldon, Prentice, Wojahn, Thibaudeau, Fairley, Kohl, Rinehart, Spanel, Snyder, Winsley and Rasmussen).

Brief History:

Committee Activity:

Law & Justice: 2/14/96, 2/23/96 [DP].

Floor Activity:

Passed House: 2/28/96, 94-0.

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass. Signed by 15 members: Representatives Sheahan, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Dellwo, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Carrell; Chappell; Cody; Lambert; McMahan; Morris; Robertson; Smith; Sterk and Veloria.

Staff: Pat Shelledy (786-7149).

Background: 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 "privileged communications." Privileges are recognized when certain classes of relationships or communications within those relationships are deemed of such importance that they are to be protected.

Under the common law, four criteria must be satisfied to find a privilege: (1) the communication must be made in confidence; (2) the element of confidentiality must be essential to the relationship; (3) the relationship must be one which in the opinion of

the community ought to be fostered; and (4) the injury of disclosing the communication must be greater than the benefit of disclosure.

Washington statutory law establishes a number of privileges, including communications between the following persons: (1) husband and wife, with some exceptions; (2) attorney and client; (3) clergy and confessor; (4) physician and patient, with some exceptions; (5) public officers and witnesses, if the public interest would suffer by disclosure; and (6) law enforcement officers and peer support counselors.

Victims of sexual assault may obtain the assistance of a sexual assault victim's advocate. A victim's advocate may provide the victim with information, medical or legal advocacy, counseling, or may accompany the victim to the hospital or legal proceedings, including interviews with police, prosecutors, and defense attorneys, and court hearings. Communications between the victim and the victim's advocate are not privileged communications.

Summary of Bill: A new privileged communication is created.

A sexual assault advocate may not be examined about any communication the victim makes to the sexual assault advocate unless the victim consents to the disclosure.

An advocate may disclose a confidential communication by the victim without the victim's consent if the failure to disclose is likely to result in a clear, imminent risk of serious physical injury to or death of the victim or another person. Any victim's advocate who discloses a confidential communication under this exception in good faith is immune from liability for the disclosure. Good faith is presumed.

A "sexual assault advocate" is defined.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: Victims of sexual assault need the support of victim advocates. The threat that an advocate may be called to testify about comments the victim makes to the advocate may destroy the victim's trust of the advocate and the system. Apparently this has happened in Kitsap County.

Testimony Against: None.

Testified: Senator Betti Sheldon, prime sponsor; Deborah Ruggles, Washington Coalition of Sexual Assault Programs (pro); and Amy Fox, Kitsap Sexual Assault Center (pro).