

# HOUSE BILL REPORT

## HB 2685

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### As Reported By House Committee On:

Law & Justice

**Title:** An act relating to communications between victims of domestic violence and victims' advocates.

**Brief Description:** Creating a privilege for communications between victims of domestic violence and victims' advocates.

**Sponsors:** Representatives Sheahan, Costa, Lambert, O'Brien, Ballasiotes, Conway, B. Thomas and Romero.

### **Brief History:**

#### **Committee Activity:**

Law & Justice: 1/28/98, 2/5/98 [DPS].

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## HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Carrell; Cody; Kenney; Lantz; Robertson and Sherstad.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Lambert and Mulliken.

**Staff:** Edie Adams (786-7180).

**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 "testimonial privileges." 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 is one that should 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; (2) attorney and client; (3) clergy and confessor; (4) physician and patient; (5) psychologist and client; (6) optometrist and client; (7) law enforcement peer support counselor and a law enforcement officer; and (8) sexual assault advocate and victim.

**Summary of Substitute Bill:** A testimonial privilege is created for communications made by a victim to a domestic violence victim advocate. A domestic violence victim advocate may not be examined about any communication made by the victim to the advocate, unless the victim consents.

A domestic violence victim advocate may disclose a confidential communication without the consent of the victim if failure to disclose would likely result in a clear and imminent risk of serious physical injury or death of the victim or another person. An advocate is immune from liability from disclosing information if the advocate acted in good faith. The good faith of the advocate is presumed in any civil or criminal action arising out of the disclosure.

"Domestic violence victim advocate" is defined as the employee or volunteer from a domestic violence victims' services program, shelter, association, or human services agency that provides information, medical or legal advocacy, counseling, or support to victims of domestic violence.

**Substitute Bill Compared to Original Bill:** The definition of domestic violence victim advocate under the original bill did not include human services agencies.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** This gives domestic violence victim advocates the same protection as sexual assault advocates. Often the same person is an advocate for both, or the advocates work in the same facility. It only makes sense to include domestic violence victim advocates.

**Testimony Against:** None.

**Testified:** Cherie Tessier, People First of Washington (pro); Mary Pontarolo, Washington State Coalition Against Domestic Violence; and Jennifer Shaw, Washington Association of Criminal Defense Lawyers and Washington Defender Association (con).