

HOUSE BILL REPORT

HB 2483

As Reported By House Committee On:
Judiciary

Title: An act relating to communications between emergency service providers and trained peer supporters.

Brief Description: Making communications between emergency service providers and trained peer supporters privileged.

Sponsors: Representative Carrell.

Brief History:

Committee Activity:

Judiciary: 1/28/00, 2/3/00 [DPS].

Brief Summary of Substitute Bill

- Makes communications made by emergency service providers to trained peer supporters during counseling confidential and not subject to disclosure unless certain conditions are met.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Carrell, Republican Co-Chair; Constantine, Democratic Co-Chair; Hurst, Democratic Vice Chair; Cox; Dickerson; Kastama; Lantz; Lovick and McDonald.

Minority Report: Without recommendation. Signed by 3 members: Representatives Lambert, Republican Vice Chair; Esser and Schindler.

Staff: Trudes Hutcheson (786-7384).

Background:

The judiciary has the 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 types of relationships, or certain types of confidential communications within relationships, are deemed so important to society that they must be protected.

A confidential communication is a statement made under circumstances showing that the speaker intends the statement to be heard only by the person addressed. A privilege is basically a personal right to preserve the confidentiality of certain private communications.

Communications made in the presence of a third party are usually not considered confidential, and therefore are not privileged. However, the presence of third persons who are considered essential to the transaction may not necessarily destroy the confidentiality. For example, the use of an interpreter between an attorney and client does not destroy the attorney/client privilege.

Under common law, four conditions must be met to find a privilege: (a) the communications must originate in confidence; (b) the element of confidentiality must be essential to the relationship; (c) the relationship is one that should be fostered; and (d) the injury of disclosing the communication must be greater than the benefit of disclosure.

Washington's statutes create a number of privileges, including communications between the following persons: (a) husband and wife; (b) attorney and client; (c) clergy and confessor; (d) physician and patient; (e) psychologist and client; (f) optometrist and client; and (g) law enforcement peer support counselor and a law enforcement officer in certain circumstances.

The law enforcement peer support counselor privilege prevents a designated peer support counselor from disclosing in any judicial proceeding any communication made to the counselor by a law enforcement officer while receiving counseling, unless the officer consents to disclosure.

The privilege does not apply if the counselor was an initial responding officer, a witness, or a party to the incident. The peer support group counselor is a person who has received training to provide emotional and moral support and counseling to an officer who needs those services as a result of an incident in which the officer was involved while acting in his or her official capacity.

Summary of Substitute Bill:

Communications made by emergency service providers participating in a peer support session conducted by a trained peer supporter are confidential and may not be

disclosed by any person participating in the session. A peer support session may consist of a trained peer supporter and one or more emergency service providers.

Disclosure is permitted if:

- the disclosure is necessary to provide assistance pursuant to the peer support session;
- the emergency service provider making the communication consents to disclosure; or
- the person seeking disclosure makes a written motion to the court requesting disclosure stating in an affidavit the reasons for the request, and the court finds, after an in camera review, that the communication is material and relevant and the probative value of the communication outweighs the privacy interest.

The confidentiality provisions apply when:

- the trained peer supporter was designated as such by the emergency service provider agency prior to the incident that prompted the delivery of peer support services;
- the emergency service provider was part of the personnel responding to, or providing assistance during, the incident; and
- the communication was made to the trained peer supporter acting in that capacity during the peer support session.

"Emergency service provider" means a law enforcement officer, fire fighter, emergency medical technician, emergency worker, or ambulance or aid vehicle services personnel.

The confidentiality provisions are intended to supplement the privilege granted to law enforcement officers under existing law. When any communication is made in a peer support session consisting of a trained peer supporter and more than one law enforcement officer, the confidentiality provisions apply. The term "peer support group counselor" used in the privilege statute for law enforcement officers is changed to "trained peer supporter."

Substitute Bill Compared to Original Bill: The substitute bill removes the requirement that the trained peer supporter be employed by the same agency or entity that employs the emergency service provider receiving the support services.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: Debriefing of emergency service providers helps them relieve stress. The key element to debriefing is confidentiality and without it, the participants will not open up.

Testimony Against: Privilege is generally between two people, and extending this kind of privilege to group sessions is unusual.

Testified: (In support) Representative Carrell, prime sponsor; and Duane Malo, Washington State Association of Fire Chiefs.

(Opposed) Tom McBride, Washington Association of Prosecuting Attorneys.