

Judiciary Committee

HB 1783

Title: *An act relating to privileged communications by fire fighters and law enforcement officers.*

Brief Description: *Making communications between fire fighters and trained peer supporters privileged.*

Sponsors: *Representatives Carrell, Lantz, Hurst, Lovick, Marine and Woods.*

Brief Summary of Bill

- *A new privileged communication is created between a trained peer supporter and a fire fighter.*
- *The definition of a trained peer supporter is expanded to include other mental health services providers.*

Hearing Date: *2/16/01*

Staff: *Katy Freeman (786-7386).*

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 privileged communications.– 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.

Under common law, four conditions must be met to find a privilege:

- *the communications must originate in confidence;*
- *the element of confidentiality must be essential to the relationship;*
- *the relationship is one that should be fostered; and*
- *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:

- *husband and wife;*
- *attorney and client;*
- *clergy and confessor;*
- *physician and patient;*
- *psychologist and client;*
- *optometrist and client; and*
- *law enforcement peer support group counselor and a law enforcement officer in certain circumstances.*

A peer support group counselor– may be a law enforcement officer or a civilian employee of a law enforcement agency who has been designated as such by the sheriff, police chief, or chief of the Washington State Patrol prior to the incident that results in counseling. A peer support group counselor may also be a nonemployee counselor. A peer support group counselor has received training to provide emotional and moral support as well as 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.

The law enforcement peer support group counselor privilege prevents a designated peer support group 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 only applies when the communication is made to the counselor while 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, a witness, or a party to the incident.

Summary of Bill:

The term peer support group counselor– used in the privilege statute is changed to trained peer supporter.–

The definition of a trained peer supporter is expanded to include designated fire fighters and civilian employees of a fire department. A trained peer supporter is a designated law enforcement officer, fire fighter, or a civilian employee of a law enforcement agency or fire department who has received training to provide emotional and moral support to an officer or fire fighter who needs those services as a result of an incident in which the officer was involved while acting in his or her official capacity.

The definition of a trained peer supporter is also expanded to include other mental health services providers. These providers may provide emotional and moral support as well as counseling to an officer or fire fighter who needs those services as a result of an incident in which the officer was involved while acting in his or her official capacity.

A privilege is created for communications made between a designated trained peer supporter and a fire fighter in certain circumstances. Therefore, a trained peer supporter cannot, without the consent of the fire fighter making the communication, testify about any communication made to the trained peer supporter by the fire fighter while receiving peer support services.

The privilege applies only to communications made to a trained peer supporter acting in his or her capacity as a trained peer supporter. The privilege does not apply if the trained peer supporter was an initial responding officer, a witness, or a party to the incident which prompted the delivery of peer support services to the fire fighter.

Appropriation: *None.*

Fiscal Note: *Not Requested.*

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