

HOUSE BILL REPORT

HB 1090

As Reported By House Committee On:
Judiciary

Title: An act relating to privileged communications.

Brief Description: Protecting communications in law enforcement officers peer support groups.

Sponsors: Representative Scott.

Brief History:

Reported by House Committee on:
Judiciary, February 16, 1993, DPS.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Forner; Johanson; Locke; Long; Mastin; H. Myers; Riley; Schmidt; Scott; Tate; and Wineberry.

Staff: Patricia Shelledy (786-7149).

Background: The judiciary has inherent power to compel witnesses to appear and testify. The presumption is that the duty of a witness is to testify about facts within the witness' knowledge. However, certain narrow exceptions to this rule have been developed through the common law and adopted in statute. Those exceptions are "testimonial privileges" which, because of countervailing policy considerations, prohibit disclosure of confidential communications made between persons occupying a special confidential relationship to one another. Because any grant of testimonial privilege is in direct conflict with the essential judicial power to compel the production of evidence, privileges are generally narrowly construed. Generally, if a third person is present when the communication is made, the privilege is lost.

Under common law, four criteria had to be met to establish a privilege: (1) the communication must originate in a confidence that it will not be disclosed; (2) the element of confidentiality must be essential to the full and

satisfactory maintenance of the relationship between the parties; (3) the relationship must be one which in the opinion of the community ought to be fostered; and (4) the injury that would inure to the relationship by the disclosure of the communication must be greater than the benefit gained for the correct disposal of litigation.

Five privileges exist in statute. Communications between the following persons are privileged: (1) husband and wife; (2) attorney and client; (3) clergy and confessor; (4) physician and patient under certain circumstances; and (5) public officers and witnesses if the statement was made in confidence and if the public interest would suffer by disclosure.

Some law enforcement agencies have "peer support group" counselors who counsel officers who have been involved in a traumatic incident while on duty, such as when the officer shoots and kills a person. Law enforcement would like a new testimonial privilege created to protect from disclosure statements the officer makes to the peer support group counselor.

Summary of Substitute Bill: A new testimonial privilege is created.

A law enforcement officer who is a designated peer support group counselor shall not, without consent of the other officer making the communication, be compelled to testify in any judicial proceeding about any communication the other law enforcement officer made to the counselor while receiving counseling from that counselor. The privilege only applies when the communication was made to the counselor when acting in his or her capacity as a peer support group counselor. The privilege does not apply if the counselor was a witness or a party to any incident which prompted the delivery of peer support group counseling services to the law enforcement officer. The role of the designated peer support group counselor is to provide emotional and moral support and counseling to an officer who needs peer support services as a result of an incident in which the officer was involved while acting in his or her official capacity.

Substitute Bill Compared to Original Bill: The bill is clarified and narrowed. The privilege only applies to the officer who made the statement and who is being counseled, not other officers. The communication must be made to a peer support group counselor while the counselor was acting in his or her capacity as a counselor. The privilege does not apply if the counselor was a witness or a party to the

incident. The role of the peer support group counselor is to provide emotional and moral support and counseling.

Fiscal Note: Not requested.

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

Testimony For: Officers who are involved in a traumatic incident, such as a shooting, may make statements that they didn't mean. If those statements are made to a peer support group counselor those statements should not be used against the officer in a subsequent proceeding. Peer support group counselors are designated members of the police force who are called to scenes to provide emotional support to an officer following a traumatic incident.

Testimony Against: None.

Witnesses: Mike Patrick, Washington State Council of Police Officers (pro); and Detective Joseph Beard, Washington State Council of Police Officers (pro).