

HOUSE BILL REPORT

HB 1260

As Reported By House Committee On:

Law & Justice

Title: An act relating to privileged communications between certified counselors and clients.

Brief Description: Providing that communications between certified counselors and their clients are privileged.

Sponsors: Representatives Skinner, Dyer, Cody, Backlund, Murray, Anderson, O'Brien, Mason and Quall.

Brief History:

Committee Activity:

Law & Justice: 2/11/97, 2/25/97 [DPS].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Carrell; Cody; Kenney; Lambert; Lantz; Radcliff; Sherstad and Skinner.

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, 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 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; and (7) law enforcement peer support counselor and a law enforcement officer in certain circumstances.

The privilege for communications between a psychologist and client does not apply in the following circumstances: (1) in a legal suit between the psychologist and client; (2) where the communication concerns the commission of a future crime; (3) where there is suspected child abuse or neglect; (4) in a mental health involuntary commitment proceeding; or (5) in a chemical dependency involuntary commitment proceeding.

Certain counselors may be registered or certified by the secretary of the Department of Health (DOH). An applicant may register as either a counselor or hypnotherapist by submitting certain information and a registration fee to the DOH. If a counselor meets specified requirements, the counselor may be certified as either a social worker, a mental health counselor, or a marriage and family therapist.

Communications between a registered or certified counselor and a client are generally confidential, but may be disclosed in the following situations: (1) with the written consent of the client or the client's legal representative; (2) if the communication reveals the contemplation or commission of a crime or harmful act; (3) if the client is a minor and the information obtained indicates the minor was the victim or subject of a crime, the counselor may testify in an examination or trial where the crime is the subject of the inquiry; (4) if the client waives the privilege by bringing charges against the counselor; (5) in response to a subpoena from a court or the secretary of the DOH; or (6) when a report of suspected child abuse or neglect is required to be made.

In general, health care records are confidential and may only be released with the authorization of the patient, or in limited circumstances without patient authorization.

Summary of Substitute Bill: The provision that generally prohibits the disclosure of confidential communications between registered or certified counselors and clients is amended to apply only to registered counselors.

A privilege for certified counselors and clients is created. Confidential communications between a client and a certified counselor are privileged against compulsory disclosure to the same extent and subject to the same conditions as confidential communications between a psychologist and client.

Substitute Bill Compared to Original Bill: The original bill repealed the provision that limits the disclosure of confidential communications between a certified or registered counselor and a client.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: Communications between a certified counselor and client should be protected with a privilege. The U.S. Supreme Court recently recognized that communications between a psychotherapist and client are entitled to the protection of a privilege. Clients often believe that their communications with their counselors are privileged and are surprised and upset when they find out that the court can compel disclosure of these communications. This affects how much a person will share in therapy or whether he or she will continue in therapy. Recent changes in the law have made it easier to compel disclosure of confidential communications that should be protected.

Testimony Against: The privilege should be extended to counselors who are certified at the national level but not at the state level. Employee assistance professionals are nationally certified and receive highly sensitive information that needs to be protected. There are many programs that consist of both state certified and state registered counselors. The patient is the patient of the program with several counselors providing services. Requiring different levels of confidentiality, depending on whether the communication was made to a certified or registered counselor within the program, creates problems for the administration of the program. The bill should be clarified to allow the Department of Health to access records for disciplinary purposes.

Testified: Representative Skinner, prime sponsor; David Dickman, National Association of Social Workers, Washington Chapter (pro); Michael Doctor, Washington Mental Health Counselors Association (pro); Janice Skinner, Disabilities Active of Grays Harbor (pro); Jan Paul, Employee Assistance Professionals Association (con); Linda Grant, Association of Alcoholism and Addiction Programs (with concerns); and Dee Spice, Department of Health.